TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 260.

HUGH WALLACE, WILL WALLACE, VERGE GOODWIN, ET AL., PLAINTIFFS IN ERROR,

vs.

MRS. ELLA ADAMS, FOR HERSELF AND AS NATURAL GUARDIAN AND NEXT FRIEND OF HENRY McSWAIN AND ROMA McSWAIN, HER MINOR CHILDREN.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED APRIL 20, 1906.

(20,205.)

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a Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the December Term, 1905, of said Court, begun and held at the United States Court House in the City of St. Louis, Missouri, on the first Monday in December, to-wit: the fourth day of December, A. D. 1905, before the Honorable Walter H. Sanborn, the Honorable William C. Hook and the Honorable Elmer B. Adams, Circuit Judges:

Attest:

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to-wit: on the thirty-first day of August, A. D. 1905, a transcript of record, pursuant to a writ of error directed to the United States Court of Appeals in the Indian Territory, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein Hugh Wallace, *et al.*, were Plaintiffs in Error and Mrs. Ella Adams, for herself and as natural guardian and next friend of Henry McSwain and Roma McSwain, her minor children, were Defendants in Error, which said transcript of record is in the words and figures following, to-wit:

b UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the United States Court of Appeals in the Indian Territory, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said United States Court of Appeals before you, at the June Term, 1905, thereof, between Hugh Wallace, Will Wallace, Virge Goodwin, Chas. Shannon, John Hunt, John Perkins and B. C. Hill, Appellants, against Mrs. Ella Adams for herself and as natural guardian and next friend of Henry McSwain and Roma McSwain, her minor children, Appellees, a manifest error hath happened, to the great damage of the said Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, John Perkins and B. C. Hill, as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals, for the Eighth Circuit, together with this writ, so that you have the said record and proceedings aforesaid, at the city of St. Louis, Missouri, and filed in the

office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, on or before the seventh day of October, 1905, to the end that the record and proceedings aforesaid being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this seventh day of August, in the year of our Lord one thousand nine hundred and five (1905).

Issued at office in the City of South McAlester, Indian Territory, with the seal of the United States Court of appeals in the Indian Territory, *with the seal of the United States Court of Appeals in the Indian Territory*, hereto affixed the date last above written.

[Seal United States Court of Appeals, Indian Territory.]

WM. P. FREEMAN,
Clerk United States Court of Appeals
in the Indian Territory.

Allowed by
WM. H. H. CLAYTON,
Associate Justice United States Court of Appeals
in the Indian Territory.

Return to Writ.

UNITED STATES OF AMERICA, *Indian Territory, ss:*

In the Court of Appeals.

In obedience to the command of the within writ, I herewith transmit to the United States Circuit Court of Appeals for the Eighth Circuit, a duty certified transcript of the record and proceeding in the within entitled case, with all the things concerning the same.

In Witness Whereof, I hereunto subscribe my name, and affix the seal of said Court at office in the City of South McAlester, this 10th day of August, A. D. 1905.

[Seal United States Court of Appeals, Indian Territory.]

WM. P. FREEMAN,
Clerk of the United States Court of Appeals
in the Indian Territory.

United States Circuit Court of Appeals, Eighth Circuit. Hugh Wallace *et al.*, Plaintiffs in Error, *vs.* Mrs. Ella Adams *et al.*, Defendants in Error. Writ of Error to the United States Court of Appeals in the Indian Territory.

d The United States of America to Mrs. Ella Adams, for herself and as natural guardian and next friend of Henry McSwain and Roma McSwain, her minor choldren, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the day this Citation bears date, pursuant to a Writ of Error, filed in the Clerk's office of the United States Court of Appeals in the Indian Territory, wherein Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, John Perkins and B. C. Hill, are Plaintiffs in Error, and you are Defendants in Error, to show cause, if any there be, why the judgment rendered against the said Plaintiffs in Error, as in said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, The Honorable William H. H. Clayton, Associate Justice of the United States Circuit Court of Appeals in the Indian Territory, this 9th day of August, in the year of our Lord one thousand nine hundred and five (1905).

WM. H. H. CLAYTON,
Associate Justice of the United States Court of Appeals in the Indian Territory.

I, H. H. Brown, Attorney of Record for the defendants in error, Mrs. Ella Adams, *et al.*, hereby accept full and complete service and notice of the foregoing citation in error. This the 11th day of August, 1905.

H. H. BROWN,
Attorney for Defendants in Error.

United States Circuit Court of Appeals, Eighth Circuit. Hugh Wallace *et al.*, Plaintiffs in Error, *vs.* Mrs. Ella Adams *et al.*, Defendants in Error. Citation on Writ of Error.

UNITED STATES OF AMERICA, *Indian Territory, In the Court of Appeals, set:*

Pleas and Proceedings in the United States Court of Appeals in the Indian Territory, at a term begun and held at the Court House in the City of South McAlester, Indian Territory, on the 13th day of June, A. D. 1905.

Present and presiding:
Hon. Charles W. Raymond, Chief Justice;
Hon. Wm. H. Clayton, Associate Justice;
Hon. Hosea Townsend, Associate Justice;
Hon. Joseph A. Gill, Associate Justice;
George K. Pritchard, U. S. Marshal, and
Wm. P. Freeman, Clerk.

HUGH WALLACE, WILL WALLACE, VERGE MCGOODWIN, CHAS. SHANNON, JOHN HUNT, JOHN PERKINS, and B. C. HILL, Appellants,

vs.

MRS. ELLA ADAMS, for Herself and as Natural Guardian and Next Friend of HENRY MCSWAIN and ROMA MCSWAIN, Her Minor Children, Appellees.

Be It Remembered, That heretofore, to-wit, on the 28th day of April, A. D. 1905, there was filed in the office of the Clerk of the United States Court of Appeals in the Indian Territory, at South McAlester, a transcript of the record and proceedings of the United States Court for the Southern District of the Indian Territory, sitting at Ardmore, in the above entitled cause, which is in the words and figures following, to-wit:

1 In the United States Court for the Southern District of the Indian Territory, at Ardmore.

MRS. ELLA ADAMS, for Herself and as Natural Guardian and Next Friend of HENRY MCSWAIN and ROMA MCSWAIN, Her Minor Children, Plaintiffs,

vs.

HUGH WALLACE, WILL WALLACE, VERGE MCGOODWIN, CHAS. SHANNON, JOHN HUNT, JOHN PERKINS, and B. C. HILL, Defendants.

Complaint at Law.

The plaintiffs respectfully state that they are all residents of the Southern Judicial District of the Indian Territory, and members of the Chickasaw Tribe of Indians, and the defendants all reside within the jurisdiction of the United States Court at Ardmore: and the defendants are United States Citizens and not members of any tribe or nation. For cause of action, the plaintiffs allege:

That on the 12th day of September, 1904, the plaintiffs appeared at the Chickasaw Land Office, and filed upon the following and

hereinafter described land. The plaintiffs are the owners of and entitled to the immediate possession of said land; together with the improvements thereon, and no other Indian citizen has any right, claim or interest in or to said land or the improvements or crops now situated upon the same. The land herein above referred to being described as follows: The same being the land filed by Henry McSwain.

The south half of the southeast quarter, and the southeast quarter of the northeast quarter of the southeast quarter; and the southeast quarter of the northwest quarter and the north half of the southwest quarter of section twenty-eight, township two south, range two west.

Plaintiffs further state that on the 21st day of September, 1904, they appeared at the Chickasaw Land Office, and the plaintiff,
2 Mrs. Adams, selected for Roma McSwain, her minor child, the following and hereinafter described premises, all of which belongs to the plaintiff, Roma McSwain, and no other citizen or Indians have any rights, title or interest in or to said premises, and no other person has any right to collect the rents due for the use of said premises for this year (1904); which land is claimed by Roma McSwain and is described as follows:

The northwest quarter of the southeast quarter; and the southwest quarter of the southwest quarter of section twenty-eight, township number two south, range one west; and the west half of the northwest quarter of the northeast quarter and the northeast quarter of the northwest quarter; and the northeast quarter of the northwest quarter of the northwest quarter of section thirty-three township two, south, range one west.

All of which land is situated within two miles of the town of Woodford, Indian Territory. The plaintiffs state that they are entitled to the immediate possession of all of said land, and they are the owners of the same; and the defendants now occupying, managing and controlling said premises, are doing so without the consent or permission of the plaintiffs, and the plaintiffs are entitled to the rents for the use of the premises aforesaid, for the year 1904.

That about 270 acres of said land is in a state of cultivation, and the average and reasonable rental value for said premises is one-third of all grain, and one-fourth of all cotton to be produced on said premises for said year (1904). That said grain and cotton will average the sum of $3.00 per acre per annum.

That the defendants are insolvent and in the event the plaintiffs should obtain a judgment in this court for possession of said premises and for the rents due for the use of the same for this year, and the crops are now being gathered, and disposed of, and will all be gathered and marketed before this case can be tried, and unless the court appoints a receiver to collect said rents and take charge of said premises, the plaintiffs' rights will be lost:

Wherefore, the plaintiffs pray that each and all of said defendants be summoned to appear and answer this complaint and on final trial they have judgment for possession of said premises; together with the reasonable rental value of the same for the year 1904, and for such other time as the defendants may wrongfully occupy the

same, but the reasonable value as — rent is to be ascertained by a judgment of this court, and pending said suit, they pray that
3 a receiver may be appointed to take charge of said premises, and collect the rents for the year 1904, and hold said rents for the further order of the court, and if said suit is not determined by the 1st of the year 1905, that said receiver be empowered to rent the premises for the year 1906, and hold the same subject to the further order of the court. And on final hearing plaintiffs pray judgment for possession of said land.

H. H. BROWN,
Attorney for Plaintiffs.

Now comes Mrs. Ella Adams, one of the plaintiffs in the above and foregoing action, and upon oath states that she is one of the plaintiffs in said action; and she is acquainted with the facts therein and the same are true and correct.

——— ———.

Subscribed and sworn to before me this the — day of September, 1904.

——— ———,
Notary Public.

In the United States Court for the Southern District of the Indian Territory at Ardmore.

MRS. ELLA ADAMS, for Herself and as Natural Guardian and Next Friend of HENRY MCSWAIN and ROMA MCSWAIN, Her Minor Children, Plaintiffs,

vs.

HUGH WALLACE, WILL WALLACE, VERGE MCGOODWIN, CHAS. SHANNON, JOHN HUNT, JOHN PERKINS, and B. C. HILL, Defendants

Second Amended Answer.

Comes now the defendant, B. C. Hill, leave of the court being first had, and amends his original and amended answer herein, so as to make the same read as follows:

This defendant denies that he is not a member of any Indian Tribe, but states that he is a member of the Choctaw Tribe of Indians by blood. He denies that the plaintiffs are the owners of, or entitled to the immediate possession, of the land described in plaintiff's complaint, or any of the improvements situated thereon. He denies that the plaintiffs, or either of them are entitled to the immediate possession of all, or any portion, of said land; or that they are entitled to the rents for the year 1904, or any other time. This defendant denies that there is as much as two hundred and seventy acres of said land in cultivation, or that the rental value of said land is of the reasonable price of three dollars per acre.

4 2d. This defendant states that he is a member of the Choctaw Tribe of Indian- by blood, and as such entitled to all the

rights, privileges and immunities of other members of said Tribe. He states that on the 8th day of July, 1896, the Commission to the Five Civilized Tribes of Indians, acting under the authority conferred upon such Commission by the Act of Congress, June 10, 1896, adopted and promulgated the following rule to govern said Commission in hearing and determining the applications for citizenship in any one of the Five Civilized Tribes, as provided for by the said Act of Congress:

"Any person desiring that said Commission pass upon his claim for citizenship, in any of said tribes, under the provisions of this act, must make application in writing, signed and sworn to, containing a particular statement of the grounds upon which his claim is based, and accompanied by such evidence, in the form of affidavits, depositions, or record evidence, as he may desire to have considered in support of his claim,—all to be forwarded, under seal to the Commission at Vinita, I. T., before the 10th day of September, 1896.

The application should state facts sufficient if true, to show that the applicant is entitled to citizenship. The applicant must, at the same time, furnish the chief or governor of the nation in which citizenship is sought, a copy of such application, and evidence, and shall furnish to the Commission evidence of this fact. Such chief, or governor must, within thirty days thereafter, furnish the Commission his answer thereto, signed and sworn to be some duly authorized officer of his government, and accompanied by such evidence in the form of affidavits, depositions or record evidence as he may desire the Commission to consider in support of his answer.

All argument shall be in writing.

HENRY L. DAWES, *Chairman;*
FRANK C. ARMSTRONG,
A. S. McKENNON,
T. B. CABANISS,
A. B. MONTGOMERY,
Commissioners.

3d. Defendant states that his right to membership in said Tribe of Indians, having been questioned by the Choctaw authorities he on the 10th day of August, 1896, presented to the said Commission to the Five Civilized Tribes, his application to be enrolled as a member of the said Choctaw Tribe of Indians. He states that said application was signed and sworn to. That a copy of same, together with a copy of all evidence used in the trial of said application, was, within thirty days after the filing of said application, furnished to the governor of the said Choctaw Nation, and that this defendant, in all things, complied literally with the requirements of the rules established by the said Commission governing the application of parties to membership in any one of the said Five Civilized Tribes.

Defendant states that thereafter, on the — day of November, 1896, his said application was acted upon by said Commission, and that membership in said Tribe was denied him, and thereafter on

the -- day of November, 1896, this defendant appealed from the finding of said Commission to this court, to-wit: The United States Court for the Southern District of the Indian Territory sitting at Ardmore.

Defendant states that on the 8th day of March 1898 said cause came on to be heard before the said court, and after the introduction of testimony and the argument of counsel, the said court having jurisdiction of said cause, rendered he following decree:

No. 149.

"J. M. HILL ET AL.
vs.
THE CHOCTAW NATION.

This day this cause coming on to be heard, upon the pleadings, exhibits, proofs and master's report filed herein, and it appearing that said report has been filed since the 21st day of February, 1898, and no exceptions filed thereto, it is therefore,

Ordered, Adjudged and Decreed by the court that said report be, and the same is hereby, confirmed in all respects. It is further adjudged that the applicants, J. M. Hill, Willie Hill, Sewell Hill, Fannie Simpson, John Simpson, Grady Simpson, Ada Bickham, Cullie Bickham, Laura Miles, Mabel Miles, Myrtle Hill, Philip Hill, Swaney Hill, Connie Hill, Jewell Hill, Grover Hill, B. C. Hill, Albert Hill, Leona Hill, Ray Hill, Bertha Hill and Mada Hill each and all be admitted as members of the Choctaw Tribe of Indians by blood, and that the applicants, Amanda Hill, wife of J. M. Hill, and Adelia Hill, wife of B. C. Hill, each and both be admitted as members of the Choctaw Tribe of Indians by intermarriage.

It is further adjudged that each and all the above named
6 parties are entitled, and are hereby given all the rights, privileges and immunities of members of the Choctaw Tribe of Indians, and the Clerk of this court is hereby ordered to transmit a certified copy of this judgment to the proper authorities, who are instructed to enroll them as such."

This defendant states that by virtue of said decree, he was admitted and decreed to be a member of the Choctaw Tribe of Indians by blood, as such entitled to all the privileges, rights and immunities of other members of said Tribe; that said judgment or decree has never been reversed, modified or set aside; but is now in full force and effect, and by reason thereof, it immediately became the duty of the said Commission to the Five Civilized Tribes to enroll this defendant as a member of the said Choctaw Tribe of Indians.

Defendant states that the said Choctaw Tribe of Indians, under the Act of July 1, 1898, appealed said cause to the Supreme Court of the United States, and on the — day of May, 1899, said cause came on for hearing before the said Supreme Court, and was in all things, affirmed and said Supreme Court issued to the said United States Court for the Southern District of the Indian Territory its mandate, directing the said court that such further execution and process should be had as according to right and justice, should be, the said appeal notwithstanding.

4th. Defendant states that on the — day of March, 1898, acting upon the faith of said judgment, he reduced to his possession, the property described in plaintiff's complaint, and has ever since held possession of the same, claiming the same as owner thereof, by virtue of his membership in said Tribe. He states that ever since he reduced said property to his possession, it has been his purpose, and is now his purpose, to take the same as his allotted share of the tribal lands of the Choctaw and Chickasaw Tribes of Indians. He states that after he reduced said property to his possession, he placed thereon fencing, houses and other lasting and permanent improvements of the reasonable value of One Thousand Dollars; and that on the 28th day of June, 1898, he was in possession of said land and improvements, claiming the same as his own.

5th. Defendant states that on the 1st day of September, 1898, and at divers times thereafter, he has placed upon said land, other lasting and valuable improvements of the reasonable value of One Thousand Dollars, all of which improvements are now upon said property, and all of which land and improvements are, as this defendant claims, his individual property.

7 6th. This defendant states that on the — day of —— 1902, the so-called "Choctaw and Chickasaw Citizenship Court," in a case pending before said court, styled "The Choctaw and Chicksaw Nation or Tribe of Indians *vs.* J. T. Riddle *et al.*" rendered a pretended decree, purporting to set aside and annul certain judgments of the United States Court for the Southern District of the Indian Territory, and of the United States Court for the Central District of the Indian Territory. Said pretended decree is in the following language, to-wit:

"The Choctaw and Chicksaw Nations or Tribes of Indians,
Plaintiffs,
vs.
J. T. Riddle, D. S. Riddle, L. A. Riddle, Elizabeth Casey, Joshua Casey, Andrew B. Hill, L. T. Hill, James W. Balthrop, T. D. Arnold, J. H. Bratcher, for Themselves and as Representatives of all Persons Similarly Situated, Claiming to be Members of the Choctaw and Chickasaw Nations, by Virtue of Alleged Decrees of the United States Court for the Central and Southern Districts of the Indian Territory Sitting Respectively at South McAlester and Ardmore, and Commonly Known as Court Claimants Defendants.

This cause coming on further to be considered, and it appearing to the court, that the paper writing purporting to be the judgment of this court herein, heretofore filed with the clerk, does not conform to the written opinion announced and rendered by the court, which has been filed and entered as a part of the record herein it is therefore ordered, adjudged and decreed by the court, that said paper writing purporting to be the judgment of this court herein, of date the 17th day of December, 1902, be and the same is hereby amended, and the following is the true judgment, intended to be entered by this court herein of that date, and the same is hereby

entered of record as the judgment of this court in this case, in accordance with the said opinion and that the same be so filed, *nunc pro tunc* as of date, the 17 day of December, 1902, as follows, to-wit:

This day this cause came on to be heard, and having been
8 fully argued by counsel, was submitted to this court on the pleadings, exhibits and testimony, upon consideration whereof, the court finds:

That due and legal notice of the pendency and prayer of this suit has been given to the defendants herein, in conformity of law;

That said defendants appeared at the hearing hereof, in person and by counsel, and that each and all of said defendants, who desired to be heard, were heard;

That notice to each of said Choctaw and Chickasaw Nations or tribes of Indians of the proceedings in the United States Court in the Indian Territory, acting under the Act of Congress, approved June 10, 1896, admitting persons to citizenship, or to enrollment as such citizens, in the Choctaw and Chickasaw Nations respectively, was indispensable;

And the court further finds that in said proceedings, in the United States Court in the Indian Territory, and said courts proceeded to hear and determine said causes *de novo,* and did not confine the same to a review of the proceedings had before the Commission to the Five Civilized Tribes, upon the papers and evidence submitted to such Commission;

That by reason of each of said facts, to wit: That the proceedings in said United States Courts, were had without notice to each of said tribes or nations when notice of each of said nations was indispensable, and that said United States Courts tried said causes *de novo* when their action should have been confined to a review of the action of the Commission to the Five Civilized Tribes, upon the papers and evidence submitted to such Commission, all of said proceedings, decrees and decisions, of said United States Courts in the Indian Territory, admitting any and all persons to citizenship or enrollment, as such citizens in said nations or tribes of Indians or either of them, ought to be set aside, annul-ed and vacated.

It is therefore, Ordered, Adjudged and Decreed, that all of said judgments, decrees and decisions, rendered by the United States Courts in the Indian Territory, acting under the Act of Congress, approved June 10, 1896, admitting persons to citizenship or to enrollment as such citizens, in the Choctaw and Chickasaw Nations respectively, upon appeal from the Commission to the Five Civilized Tribes, in favor of the ten defendants, named in the bill in this proceeding, as well as to those who have come in and made themselves parties thereto, and the judgments rendered as aforesaid, in favor of all persons similarly situated, are set aside, annulled,
9 vacated and held for naught.

(Signed) SPENCER B. ADAMS,
Chief Judge.
WALTER L. WEAVER,
Associate Judge.
HENRY S. FOOTE,
Associate Judge."

Defendant states that he was not a party to said proceedings; that no notice was ever served on him in the execution of said "pretended suit"; that no testimony was introduced in the trial of said cause to show that this defendant was situated similar-y to either one of the defendants in said suit; and that said "pretended decree" did not in any manner, set aside or affect the judgments of this court, declaring this defendant to be a member of the Choctaw Tribe of Indians. Defendant states that the so-called "C-octaw and Chickasaw Citizenship Court" had no jurisdiction of the person of this defendant; that it was without authority to pass upon or determine his right; that the so-called court was not a judicial tribunal, but was a political agency, or Commission, and as such had not power to set aside, modify or, in any manner, affect the decree of the said United States Court for the Southern District of the Indian Territory establishing the rights of this defendant, as a member of the said Choctaw Tribe of Indians.

7th. The defendant states that on the — day of —— 1898, he exhibited a duly certified copy of the decree of the United States Court for the Southern District of the Indian Territory, admitting him to citizenship, to the said Commission to the Five Civilized Tribes, and asked to be enrolled as a member of the said Choctaw Tribe of Indians. That on the — day —— 1904, the said Commission to the Five Civilized Tribes, refused, and has ever since, refused, and still refuses, to enroll this defendant as a member of said tribe of Indians, claiming that the "pretended decree" of the so-called "Choctaw and Chickasaw Citizenship Court" vacated and annulled the decree of the United States Court for the Southern District of the Indian Territory, declaring this defendant to be a member of the Choctaw Tribe of Indians.

8th. This defendant states that on the 15 day of September, 1904, he appeared before the said Commission to the Five Civilized Tribes, and demanded the right to select the land sued for in this suit, as his allotment, and demanded that the same be allotted to him as a member of the Choctaw Tribe of Indians. This request was, by the said Commission, without authority of law, refused. This defendant, then asked permission of the said Commission to file a contest, contesting the right of the plaintiffs to allot such land, and requesting that he be permitted to show that he was the owner of said property and entitled to allot the same, and that the plaintiffs have no right or title in or to the same. This request was by the said Commission, without authority of law, and without investigation, refused.

The defendant states that the Commission refused to investigate the question as to whether or not this defendant is a member of the Choctaw Tribe of Indians, and refuses to hear any testimony to determine whether or not the defendant is the owner of the property sued for. Said Commission would enroll this defendant as a member of the said Tribe of Indians, and would allot said land to this defendant, except for the fact that the said Commission, and the members thereof, hold that the so-called "Judgments" of the "Choctaw and Chickasaw Citizenship Court" vacated the judgment of

this court admitting this defendant to citizenship, and said Commission now claims to be without jurisdiction to pass upon or determine the right of this defendant. This defendant states that ever since the 28th day of June, 1898, he has been, and now is, the owner of the land sued for; together with all the improvements thereon: that the plaintiffs are trying to deprive him of the use and benefit of said property, as well as the ownership thereof, without process of law.

This defendant states that said land has been appraised by the said Commission to the Five Civilized Tribes; that the same does not amount to more in value than three hundred and twenty acres of the average land of the said Choctaw and Chickasaw Tribes of Indians, and is not more in value than or in acres than this defendant is entitled to allot in his own proper person, as a member of the said Choctaw Tribe of Indians.

This defendant states that at the time said land was filed upon by the plaintiffs they knew all the foregoing facts—that he had been adjudged by the United States Court for the Southern District of the Indian Territory to be a member of the Choctaw Tribe of Indians; that they knew the defendant had been in the possession of said property since the 15th day of March, 1898: that they knew the defendant had erected improvements upon said property, as before mentioned; and they are seeking to deprive this defend-
11 ant of his ownership to said property, without compensation and without due process of law. Defendant states that said property is reasonably worth the sum of Fifty Two Hundred Dollars

Defendant states that prior to the 28th day of June, 1898, all the lands in the Chickasaw and Choctaw Nations were, by the said Commission to the Five Civilized Tribes, surveyed into sections and legal subdivisions thereof, preparatory to allotment.

Wherefore, this defendant asks that this cause be transferred to the Equity docket; that the filing of the plaintiffs upon said land may be canceled; that he be declared to be the owner of said land; and that he be quieted in his title to possession of the same; for his costs and all other proper relief.

CRUCE, CRUCE & BLEAKMORE,
Attorneys for Defendant B. C. Hill.

Endorsed on back: No. 5982. Mrs. Ella Adams, *et al., vs.* Hugh Wallace, *et al.* Second Amended Answer. Filed in open Court April 8, 1905. C. M. Campbell, Clerk.

In the United States Court for the Southern District of the Indian Territory at Ardmore.

MRS. ELLA ADAMS, for Herself and as Natural Guardian and Next Friend of HENRY MCSWAIN and ROMA MCSWAIN, Her Minor Children, Plaintiffs,

vs.

HUGH WALLACE, WILL WALLACE, VERGE MCGOODWIN, CHAS. SHANNON, JOHN HUNT, JOHN PERKINS, and B. C. HILL, Defendants.

Second Amended Answer.

Come now the defendants, Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, and John Perkins, and for amendment to their first amended answer herein, they adopt as their separate answer, the second amended answer of the defendant, B. C. Hill, filed herein, and they state that for reasons therein set forth, said plaintiff is not entitled to recover the property sued for, and they therefore ask to be discharged for their costs.

CRUCE, CRUCE & BLEAKMORE.

12 Endorsed on back: Mrs. Ella Adams, *et al., vs.* Hugh Wallace, *et al.* Second Amended Answer Filed in open Court April 8, 1905. C. M. Campbell, Clerk.

In the United States Court for the Southern District of the Indian Territory at Ardmore.

MRS. ELLA ADAMS, for Herself and as Natural Guardian and Next Friend of HENRY MCSWAIN and ROMA MCSWAIN, Her Minor Children, Plaintiffs,

vs.

HUGH WALLACE, WILL WALLACE, VERGE MCGOODWIN, CHAS. SHANNON, JOHN HUNT, JOHN PERKINS, and B. C. HILL, Defendants.

Comes now the plaintiff, and demurs to the second amended answer of the defendants, Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, and states that the same does not set up facts sufficient to constitutte a defense to plaintiff's complaint.

H. H. BROWN,
Attorney for Plaintiff.

Endorsed on back: Mrs. Ella Adams, *et al., vs.* Hugh Wallace, *et al.* Demurrer. Filed in open Court April 8, 1905. C. M. Campbell, Clerk.

In the United States Circuit Court for the Southern District of the Indian Territory at Ardmore.

MRS. ELLA ADAMS ET AL.
vs.
HUGH WALLACE ET AL.

Demurrer.

Comes now the plaintiff, and demurs to the second amended answer of the defendant, B. C. Hill; and says that the same does not contain any defense to the plaintiff's cause of action.

H. H. BROWN,
Attorney for Plaintiff.

13 Endorsed on back: Mrs. Ella Adams, *et al.*, *vs.* Hugh Wallace, *et al.* Demurrer. Filed in open Court April 8, 1905. C. M. Campbell, Clerk.

In the United States Court for the Southern District of the Indian Territory at Ardmore.

MRS. ELLA ADAMS, for Herself and as Natural Guardian and Next Friend of HENRY MCSWAIN and ROMA MCSWAIN, Her Minor Children, Plaintiffs,

vs.

HUGH WALLACE, WILL WALLACE, VERGE MCGOODWIN, CHAS. SHANNON, JOHN HUNT, JOHN PERKINS, and B. C. HILL, Defendants.

Judgment.

This day came on to be heard plaintiff's demurrer to the second amended answer of the defendants, Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, and John Perkins, and the Court, being sufficiently advised, said demurrer is hereby sustained; and came on for further hearing the plaintiff's demurrer to the second amended answer of the defendant, B. C. Hill, and the court, being fully advised, the same is sustained, and the said defendants, declining to plead further, it is therefore ordered, adjudged and decreed by the Court that the plaintiff, Mrs. Ella Adams, for herself, and as natural guardian and next friend of Henry McSwain and Roma McSwain, do have and recover of, and from, *the* Hugh Wallace, Will Wallace, Verge Goodwin, Chas. Shannon, John Hunt, and John Perkins, defendants, B. C. Hill, the premises described in plaintiff's complaint. That is to say, the south half of the southeast quarter, and the southeast quarter of the northeast quarter; of the southeast quarter; and the southeast quarter of the southwest quarter; and the north half of the southwest quarter; and the northwest quarter of the southeast quarter; and

the southwest quarter of the southwest quarter of section 28, township 2 south, range one west; also the west half of the northwest quarter of the northeast quarter; and the northeast quarter of the northwest quarter; and the northeast quarter of the northwest quarter of section 33, township 2 range one west, all in the Chickasaw Nation, Indian Territory; together with all costs of
14 plaintiffs herein expended, for which let execution issue.

It is further ordered that the money in the hands of the receiver in this case be paid to plaintiff. To which action of the court, in sustaining said demurrer, and in rendering judgment for the plaintiff, the defendants, in open court, except.

In the United States Court for the Southern District of the Indian Territory at Ardmore.

MRS. ELLA ADAMS, for Herself and as Natural Guardian and Next Friend of HENRY MCSWAIN and ROMA MCSWAIN, Her Minor Children, Plaintiffs,

vs.

HUGH WALLACE, WILL WALLACE, VERGE MCGOODWIN, CHAS. SHANNON, JOHN HUNT, JOHN PERKINS, and B. C. HILL, Defendants.

Motion for New Trial.

Come now the defendants herein, and move the court to set aside the judgment herein rendered, and grant them a new trial, for the following reasons:

The court erred in sustaining the demurrer to the second amended answer of Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt and John Perkins.

2d. The court erred in sustaining the demur-er to the second amended answer of the defendant, B. C. Hill.

3d. The Court erred in rendering judgment against the defendants herein.

CRUCE, CRUCE & BLEAKMORE,
Attorneys for Defendant.

Endorsed on back: Mrs. Ella Adams, *et al., vs.* Hugh Wallace, *et al.* Motion for new trial. Filed in open Court April 8, 1905. C. M Campbell, Clerk.

In the United States Court for the Southern District of the Indian Territory at Ardmore.

MRS. ELLA ADAMS ET AL.
vs.
HUGH WALLACE ET AL.

Bill of Exceptions.

Be it remembered, that at a regular term of the United
15 States Court for the Southern District of the Indian Territory, at Ardmore, on this the 8th day of April 1905, came on to be heard the demurrer to the second amended answer of the defendant, B. C. Hill, which demurrer was, by the court sustained; to which the defendants excepted. And on the same day, and at the same time, came on to be heard the demurrer to the second amended answer of Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, and John Perkins; which demurrer was, by the court sustained; to which action of the court, the defendants excepted.

And on the same day, the Court rendered judgment for the plaintiffs, to which the defendants excepted. And on the same day, came on to be heard defendant's motion for a new trial, which motion was overruled; to which the defendant excepted. Said motion is in the following words, to wit:

"In the United States Court for the Southern District of the Indian Territory at Ardmore.

MRS. ELLA ADAMS ET AL.
vs.
HUGH WALLACE ET AL.

Motion for a New Trial.

Come now the defendants herein, and move the court to set aside the judgment herein rendered, and grant them a new trial for the following reasons:

The court erred in sustaining the demurrer to the second amended answer of Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt and John Perkins.

2d. The court erred in sustaining the demurrer to the second amended answer of the defendent, B. C. Hill.

3d. The court erred in rendering judgment against the defendants herein.

CRUCE, CRUCE & BLEAKMORE,
Attorneys for Defendants.

On the same day, the defendants prayed an appeal to the United States Court of Appeals for the Indian Territory, which was granted,

and they were given sixty days' time in which to file a bill of exceptions.

And now, on this the 17th day of April, 1905, the foregoing is declared to be a correct bill of exceptions in this case, and is ordered to be filed by the Clerk, as a part of the record.

HOSEA TOWNSEND, *Judge.*

16 Endorsed on back: No. 5982. Mrs. Ella Adams *et al. vs.* Hugh Wallace *et al.* Bill of Exceptions. Filed April 17, 1905. C. M. Campbell, Clerk.

In the United States Court for the Southern District of Indian Territory at Ardmore.

MRS. ELLA ADAMS, for Herself and as Natural Guardian and Next Friend of HENRY MCSWAIN and ROMA MCSWAIN, Her Minor Children, Plaintiffs,

vs.

HUGH WALLACE, WILL WALLACE, VERGE MCGOODWIN, CHAS. SHANNON, JOHN HUNT, JOHN PERKINS, and B. C. HILL, Defendants.

Petition for Writ of Error.

And now come Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, John Perkins and B. C. Hill, defendants herein, and say that on or about the 8th day of April, 1905, this court entered judgment herein, in favor of the plaintiff, and against these defendants, in which judgment and the proceedings had prior thereto in this cause, certain errors were committed, to the prejudice of these defendants, all of which will more in detail appear, from the assignment of errors, which is filed with this petition.

Wherefore these defendants pray that a writ of error may issue in this behalf, out of the United States Court of Appeals for the Indian Territory, for the correction of errors, so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said Court of Appeals.

CRUCE, CRUCE & BLEAKMORE,
Attorneys for Defendants.

The writ of error as herein prayed for is allowed, and, upon the defendants giving bond, according to law, in the sum of 500 Dollars the same shall operate as a supersedeas bond.

HOSEA TOWNSEND,
Judge of the United States Court for the Southern
17 *District of the Indian Territory.*

Endorsed on back: No. 5982. Mrs. Ella Adams *et al. vs.* Hugh Wallace, *et al.* Petition for Writ of Error and order allowing the same.

In the United States Court for the Southern District of the Indian Territory at Ardmore.

MRS. ELLA ADAMS ET AL.
vs.
HUGH WALLACE ET AL.

Assignment of Error.

The defendants, in connection with their petition for a writ of error, make the following assignemant of error, which they aver occurred upon the trial of the cause, to wit:

The Court erred in sustaining the demurrer to the second amended answer of Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt and John Perkins.

2d. The Court erred in sustaining the demurrer to the second amended answer of the defendant, B. C. Hill.

3d. The Court erred in rendering judgment for the plaintiff and against the defendants herein.

4th. The Court erred in overruling defendants' motion for a new trial.

Wherefore the defendants pray that the judgment of the United States Court for the Southern District of the Indian Territory may be reversed.

CRUCE, CRUCE & BLEAKMORE,
Attorneys for Defendants.

Endorsed on back: No. 5982. Mrs. Ella Adams *et al. vs.* Hugh Wallace, *et al.* Assignment of Error.

In the United States Court for the Southern District of the Indian Territory at Ardmore.

UNITED STATES OF AMERICA,
18 *Southern District, Indian Territory, ss:*

The President of the United States to the Honorable Judge of the United States Court for the Southern District of the Indian Territory, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said District Court before you between Mrs. Ella Adams, for herself and as natural guardian and next friend of Henry McSwain and Roma McSwain, her minor children, plaintiffs, and Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, John Perkins and B. C. Hill, defendants, a manifest error has happened, to the great damage of the said defendants, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done, to the parties aforesaid in this behalf,

do command you, if judgment be therein given, that then under your seal, d-stinctly and openly, you send the record and proceeding aforesaid, with all things concerning same, to the United States Court of Appeals for the Indian Territory, together with this writ, so that you have the same at South McAlester, in the said Indian Territory, on or before sixty days from the date hereof, in the said United States Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said United States Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this the 24th day of April, 1905.

Witness my hand and seal, as Clerk of said Court.

C. M. CAMPBELL,
Clerk of the U. S. Court for the Southern District of I. T.

Allowed by
HOSEA TOWNSEND,
Judge of said Court.

Endorsed on back: No. 5982. Mrs. Ella Adams, *et al.*, *vs.* Hugh Wallace, *et al.* Writ of Error.

In the United States Court for the Southern District of the Indian Territory at Ardmore.

19 UNITED STATES OF AMERICA, *Southern District, Indian Territory:*

Citation in Error.

To Mrs. Ella Adams, for yourself, and as next friend and natural guardian of Henry McSwain and Roma McSwain, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Court of Appeals for the Indian Territory, to be holden in the City of South McAlester, in said Territory, on or before sixty days from date hereof, pursuant to a writ of error filed in the Clerk's office of the United States Court for the Southern District of the Indian Territory, wherein Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, John Perkins and B. C. Hill, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Hosea Townsend, Judge of the United States Court for the Southern District of the Indian Territory, this 24th day of April, 1905.

HOSEA TOWNSEND,
Judge of the United States Court for the Southern District of Indian Territory.

I, H. H. Brown, attorney of record for the within named Ella Adams, Henry McSwain, and Roma McSwain, plaintiffs in the original suit, and defendants in error, hereby accept service of the within citation, and waive all further notice in the premises.

H. H. BROWN,
Attorney for Defendant in Error.

Endorsed on back: No. 5982. Mrs. Ella Adams, *et al.*, *vs.* Hugh Wallace. Citation in Error.

THE UNITED STATES OF AMERICA, *Southern Judicial District*
20 *of the Indian Territory:*

In pursuance of the command of the writ of error within, I, C. M. Campbell, Clerk of the United States Court, Southern District, Indian Territory, do herewith transmit a true copy of the record, bill of exceptions, assignment of errors, and all proceedings in the case of Ella Adams *et al. vs.* Hugh Wallace, lately pending in the United States Court for the Southern District of the Indian Territory at Ardmore, under my hand and seal of said Court.

Witness my official signature, and the seal of said Court at the city of Ardmore, in said District, this 26th day of April, in the year of our Lord, One Thousand, Nine Hundred and Five and of the Independence of the United States of America, the One Hundred and Twenty-Eighth.

[SEAL.]

C. M. CAMPBELL,
Clerk United States Court, Southern District, Indian Territory.

No. 626. Hugh Wallace, *et al.*, Appellants, *vs.* Mrs. Ella Adams, *et al.*, Appellees. Filed in the Office of Clerk of U. S. Court of Appeals Ind. Ter., April 28, 1905. W. P. Freeman, Clerk.

21 And afterwards, to-wit: on the 15th day of June, A. D. 1905, the Appellants filed their motion to have this cause decided at the June Term, 1905, of the Court of Appeals in the Indian Territory, which said motion is in words and figures following, to-wit:

In the United States Court of Appeals for the Indian Territory, June Term, 1905.

No. 626.

HUGH WALLACE ET AL., Appellants,
vs.
MRS. ELLA ADAMS ET AL., Appellees.

Motion.

The appellants state that living in the Choctaw and Chickasaw Nations are nearly three thousand people claiming rights similar to those insisted upon by the appellants in this case, and whose con-

tentions will be determined by the judgment herein. It is desirable to get the judgment of the Supreme Court upon the questions involved in this case, and the appellants therefore respectfully request this Court to decide this case at its present sitting.

CRUCE, CRUCE AND BLEAKMORE,
Attorneys for Appellants.

Endorsed: No. 626. Hugh Wallace *et al.*, Appellants, *vs.* Mrs. Ella Adams *et al.*, Appellees. United States Court of Appeals, June Term, 1905. Motion. Filed in the office of Clerk of U. S. Court of Appeals, Ind. Ter., June 15, 1905. Wm. P. Freeman, Clerk.

And afterwards, to-wit: on the 16th day of June, A. D. 1905, said United States Court of Appeals in the Indian Territory handed down *in* its opinion in said cause, which is in the words a-d figures following, to-wit:

In the United States Court of Appeals in the Indian Territory.

No. 626.

HUGH WALLACE ET AL., Appellants,
vs.
ELLA ADAMS ET AL., Appellees.

Appeal from the United States Court for the Southern District of the Indian Territory.

Hon. Hosea Townsend, Judge presiding.
Cruce, Cruce & Bleakmore, for Appellants.
H. H. Brown, for Appellees.

22 *Per Curiam:*

The main question presented by this appeal is one involving the constitutionality of sections 31, 32 and 33, of the Act of Congress of July 1, 1902. These sections are as follows:

It being claimed and insisted by the Choctaw and Chickasaw nations that the United States courts in the Indian Territory, acti-g under the Act of Congress approved June 10, 1896, have admitted persons to citizenship or enrollment as such citizens in the Choctaw and Chickasaw nations respectively, without notice of the proceedings in such courts being given to each of said nations; and it being insisted by said nations that, in such proceedings, notice to each of said nations was indispensable, and it being claimed and insisted by said nations that the proceedings in the United States courts in the Indian Territory, under the said Act of June 10, 1896, should have been confined to a review of the action of the Commission to the Five Civilized Tribes, upon the papers and evidence submitted to such commission, and should not have extended to a trial *de novo* of the question of citizenship; and it being desirable to finally

determine these questions, the two nations, jointly, or either of said nations acting separately and making the other a party defendant, may, within 90 days after this agreement becomes effective, by a bill in equity filed in the Choctaw and Chickasaw citizenship court hereinafter named, seek the annulment and vacation of all such decisions by said courts. Ten persons so admitted to citizenship or enrollment by said courts, with notice to one but not to both of said nations, shall be made defendants to said suit as representatives of the entire class of persons similarly situated, the number of such persons being too numerous to require all of them to be made individual parties to the suit; but any person so situated may, upon his application, be made a party defendant to the suit. Notice of the institution of said suit shall be personally served upon the chief executive of the defendant nation, if either nation be made a party defendant as aforesaid, and upon each of said ten representative defendants, and shall also be published for a period of four weeks in at least two weekly newspapers having general circulation in the Choctaw and Chickasaw nations. Such notice shall set forth the nature and prayer of the bill, with the time for answering the same, which shall not be less than thirty days after the last publication. Said suit shall be determined at the earliest practicable time, shall be confined to a final determination of the questions of law here named, and shall be without prejudice to the determination of any charge or claim that the admission of such persons to citizenship or enrollment by
23 said United States courts in the Indian Territory was wrongfully obtained as provided in the next section. In the event said citizenship judgments or decisions are annulled or vacated in the test suit hereinbefore authorized, because of either or both of the irregularities claimed and insisted upon by said nations as aforesaid, then the files, papers and proceedings in any citizenship case in which the judgment or decision is so annulled or vacated, shall, upon written application therefore, made within ninety days thereafter by any party thereto, who is thus deprived of a favorable judgment upon his claimed citizenship, be transferred and certified to said citizenship court by the court having custody and control of such files, papers and proceedings, and, upon the filing in such citizenship court of the files, papers and proceedings in any such citizenship case, accompanied by due proof that notice in writing of the transfer and certification thereof has been given to the chief executive officer of each of said nations, said citizenship case shall be docketed in said citizenship court, and such further proceedings shall be had therein in that court as ought to have been had in the court to which the same was taken on appeal from the Commission to the Five Civilized Tribes, and as if no judgment or decision has been rendered therein.

Said citizenship court shall also have appellate jurisdiction over all judgments of the courts in Indian Territory rendered under said Act of Congress of June tenth, eighteen hundred and ninety-six, admitting persons to citizenship or to enrollment as citizens in either of said nations. The right of appeal may be exercised by the said nations jointly or by either of them acting seperately at any time within six months after this agreem-nt is finally ratified. In the

exercise of such appellate jurisdiction said citizenship court shall be authorized to consider, review and revise all such judgments, both as to findings of fact and conclusions of law, and may, wherever in its judgment substantial justice will thereby be subserved, permit either party to any appeal to take and present such further evidence as may be necessary to enable said court to determine the very right of the controversy. And said court shall have power to make all needful rules and regulations prescribing the manner of taking and conducting said appeals and of taking additional evidence therein. Such citizenship court shall also have like appellate jurisdiction and authority over judgments rendered by such courts under the said act denying claims to citizenship, or to enrollment as citizens, in either of said nations. Such appeals shall be taken within the time hereinbefore specified and shall be taken, conducted and disposed
24 of in the same manner as appeals by the said nations, save that notice of appeals by citizenship claimants shall be served upon the chief executive officer of both nations. Provided, that paragraphs thirty-one, thirty-two and thirty-three hereof shall go into effect immediately after the passage of this Act by Congress.

A court is hereby created, to be known as the Choctaw and Chickasaw Citizenship Court, the existence of which shall terminate upon the final determination of the suits and proceedings named in the last two preceding sections, but in no event later than the thirty-first day of December, nineteen hundred and three. Said court shall have all authority and power necessary to the hearing and determination of the suits and proceedings so committed to its jurisdiction, including the authority to issue and enforce all requisite writs, process and orders, and to prescribe rules and regulations for the transaction of its business. It shall also have all the powers of a Circuit Court of the United States in compelling the production of books, papers and documents, the attendance *the production of books papers and documents, the attendance* of witnesses and in punishing contempt. Except where herein otherwise expressly provided, the pleadings, practice and proceedings in said court shall conform, as near as may be, to the pleadings, practice and proceedings in equity cases in the Circuit Courts of the United States. The testimony shall be taken in court or before one of the judges so far as practicable. Each judge shall be authorized to grant, in vacation or recess, interlocutory orders and to hear and dispose of interlocutory motions not affecting the substantial merits of the case. Said court shall have a chief judge and two associate judges, a clerk, and a bailiff. The judges shall be appointed by the President, by and with the advice and consent of the Senate, and shall each receive a compensation of five thousand dollars per annum, and his necessary and actual traveling and personal expenses while engaged in the performance of his duties. The clerk, stenographer and bailiff shall be appointed by the judges, or a majority of them, and shall receive the following yearly compensation: Clerk, two thousand four hundred dollars; stenographer, twelve hundred dollars; bailiff, nine hundred dollars. The compensation of all these officers shall be paid by the United States in monthly installments. The moneys to pay said compensations are hereby appropriated, and there is also hereby appro-

priated the sum of five thousand dollars, or so much thereof as may be necessary, to be expended under the direction of the Secre-
25 tary of the Interior, to pay such contingent expenses of said court and its officers as to such Secretary may seem proper. Said court shall have a seal, shall sit at such place or places in the Choctaw and Chickasaw nations as the judges may designate, and shall hold public sessions, beginning the first Monday in each month, so far as may be practicable or necessary. Each judge and the clerk and deputy clerk shall be authorized to administer oaths. All writs and process issued by said court shall be served by the United States marshal for the district in which the service is to be had. The fees for serving process and the fees of witnesses shall be paid by the party at whose instance such process is issued or such witnesses are subpœnaed, and the rate or amount of such fees shall be the same as is allowed in civil causes in the Circuit Court of the United States for the Western District of Arkansas. No fees shall be charged by the clerk or other officers of said court. The clerk of the United States Court in Indian Territory having custody and control of the files, papers and proceedings in the original citizenship cases, shall receive a fee of two dollars and fifty cents for transferring and certifying to the Citizenship Court the files, papers and proceedings in each case, without regard to the number of persons whose citizenship is involved therein, and said fee shall be paid by the person applying for such transfer and certification. The judgment of the Citizenship Court in any or all of the suits or proceedings so committed to its jur-diction shall be final. All expenses necessary to the proper conduct, on behalf of the nations, of the suits and proceedings provided for in this and the two proceeding sections shall be incurred under the directions of the executives of the two nations, and the Secretary of the Interior is hereby authorized, upon certificate of said executives, to pay such expenses as in his judgment are reasonable and necessary out of any of the joint funds of said nations in the Treasury of the United States.

This court, after examination of the record, is of opinion Congress had the power to enact the provisions above set out and they are not in conflict with the Constitution of the United States, and the opinion of the Court below is, therefore, affirmed.

Townsend, J., did not sit in the cause.

Endorsed: No. 626. Filed in the office of Clerk of U. S. Court of Appeals, Ind. Ter., June 16, 1905. Wm. P. Freeman, Clerk.

Upon which opinion the said Court rendered and caused to be entered the following judgment in said cause, to-wit:

26 HUGH WALLACE ET AL., Appellants,
vs.
MRS. ELLA ADAMS ET AL., Appellees.

Appeal from United States Court, Southern District, Indian Territory.

This cause came on to be heard upon the transcript of the record of the United States Court for the Southern District of the Indian Territory and was argued by counsel, on consideration whereof it is the opinion of the court that there is no error in the proceedings and judgment of said court for the Southern District in this cause.

It is therefore considered by the court that the judgment of said Court for the Southern District, in this cause rendered, be and the same is hereby in all things affirmed with costs.

It is further considered that said appellees recover of said appellants all their costs in this court in this cause expended, and have execution thereof.

And afterwards, to-wit: on the 7th day of August, said appellants filed in the office of the Clerk of the said Court their petition for a writ of error, which, with endorsements thereon, is in the words and figures following, to-wit:

In the United States Court of Appeals for the Indian Territory.

Petition for Writ of Error.

MRS. ELLA ADAMS, for Herself and as Natural Guardian and Next Friend of HENRY MCSWAIN and ROMA MCSWAIN, Her Minor Children, Plaintiffs,
vs.
HUGH WALLACE, WILL WALLACE, VERGE MCGOODWIN, CHAS. SHANNON, JOHN HUNT, JOHN PERKINS and C. B. HILL, Defendants.

And now comes Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, John Perkins and B. C. Hill, defendants below and appellants herein and say that on or about the 16th day of June, 1905, this court entered judgment herein, in favor of the plaintiffs, appellees, and against the defendants, appellants, affirming the judgment of the trial court, in which judgments and the proceedings had prior thereto in this cause, certain errors were committed, to the prejudice of these defendants, appellants, all of which will in more detail appear, from the assignment of errors filed with this petition.

27 Wherefore these defendants pray that a writ of error may issue in this behalf out of the United States Circuit Court of Appeals for the Eighth Circuit, for the correction of errors so complained of, and that a transcript of the record, proceedings and papers

in this cause, duly authenticated, may be sent to the said United States Circuit Court of Appeals.

CRUCE, CRUCE AND BLEAKMORE,
Attorneys for Appellants.

Writ of Error allowed this 7th day of August, A. D. 1905, and cost bond fixed at Five Hundred Dollars.

WM. H. H. CLAYTON,
Associate Justice, United States Court of Appeals in the Indian Territory.

Endorsed: Mrs. Ella Adams, *et al. vs.* Hugh Wallace, *et al.* Petition for writ of error. Filed in the office of Clerk of U. S. Court of Appeals Ind. Ter., Aug. 7, 1905. Wm. P. Freeman, Clerk.

And afterwards, to-wit: on said 7th day of August said appellants filed in the office of the Clerk of said court their assignments of error in said cause, which is in the words and figures following, to-wit:

In the United States Court of Appeals for the Indian Territory.

Assignment of Errors.

MRS. ELLA ADAMS ET AL.
vs.
HUGH WALLACE ET AL.

The appellants, in connection with their petition for a writ of error, make the following assignments of error, which they aver occurred in the hearing of this cause, to-wit:

1st. The trial court erred in sustaining the demurrer to the second amended answer of Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt and John Perkins.

2nd. The trial court erred in sustaining the demurrer to the second amended answer of the defendant B. C. Hill.

3rd. The trial court erred in rendering judgment for the plaintiffs and against the defendants.

4th. The trial court erred in overruling the defendants' motion for a new trial.

28 5th. The United States Court of Appeals for the Indian Territory erred in affirming the judgment of the trial court.

Wherefore appellants pray that the judgment of the United States Court of Appeals for the Indian Territory, as well as the judgment of the United States Court for the Southern District of the Indian Territory may be reversed.

CRUCE, CRUCE AND BLEAKMORE,
Attorneys for Appellants.

Endorsed: Mrs. Ella Adams, *et al. vs.* Hugh Wallace, *et al.* Assignment of errors. Filed in the office of Clerk of U. S. Court of Appeals, Ind. Ter., Aug. 7, 1905. Wm. P. Freeman, Clerk.

And afterwards, to-wit: On the 9th day of August, said appellants filed in the office of the Clerk of said court their cost bond in said cause, which is in the words and figures following, to-wit:

In the United States Court of Appeals for the Indian Territory.

No. 626.

HUGH WALLACE ET AL.
vs.
MRS. ELLA ADAMS ET AL.

Know all men by these presents: That we, Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, John Perkins, B. C. Hill and Lee Cruce are held and firmly bound unto Mrs. Ella Adams, for herself and as natural guardian and next friend of Henry McSwain and Roma McSwain, in the full and just sum of Five Hundred Dollars ($500), to be paid to the said Mrs. Ella Adams, her heirs, executors, administrators and assigns, to which payment well and truly to be made, we bind ourselves, heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this 8th day of August, 1905.

Whereas, lately at the June 1905 term of the United States Court of Appeals for the Indian Territory in a suit depending in said court between Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, John Perkins, B. C. Hill, appellants and Mrs. Ella Adams, for herself and as natural guardian and next friend of Henry McSwain and Roma McSwain, her minor children, appellees, judgment was rendered against the appellants, and the said appellants have obtained a writ of error in the said court to reverse the judgment in the aforesaid suit, and a citation, directed to the said Mrs. Ella Adams, citing her to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the date of said citation.

29 Now, the condition of the above obligation is such that if the said Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, John Perkins, and B. C. Hill shall prosecute said writ of error to effect and answer all damages and costs if they fail to make good their plea then the above obligation to be void, else to remain in full force and effect.

Signed and sealed in the presence of

HUGH WALLACE,
WILL WALLACE,
VERGE McGOODWIN,
CHAS. SHANNON,
JOHN HUNT,
JOHN PERKINS,
B. C. HILL,
By W. I. CRUCE, *Att'y.*
LEE CRUCE.

Approved by:
WM. H. H. CLAYTON,
Associate Justice U. S. Court of Appeals, I. T.

Endorsed: No. 626. Hugh Wallace, *et al.*, Appellants, *vs.* Mrs. Ella Adams *et al.*, Appellees. Cost Bond. Filed in the office of Clerk of U. S. Court of Appeals, Ind. Ter., Aug. 9, 1905. Wm. P. Freeman, Clerk.

UNITED STATES OF AMERICA, *Indian Territory, in the Court of Appeals, ss:*

I, William P. Freeman, Clerk of the United States Court of Appeals in the Indian Territory, do hereby certify that the foregoing is a full, true and complete transcript of the record and proceedings, together with all things concerning the same, of the said Court, in the cause therein named, as fully as the same remains of record and on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court, at office in the city of South McAlester, Indian Territory, this 10th day of August, A. D. 1905.

[Seal United States Court of Appeals in the Indian Territory.]

WM. P. FREEMAN,
Clerk United States Court of Appeals in the Indian Territory.

Filed Aug. 21, 1905.

JOHN D. JORDAN, *Clerk.*

30 *(Appearance of Counsel for Plaintiffs in Error.)*

And on the twenty-first day of August, A. D. 1905, the appearance of counsel for the plaintiffs in error was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

No. 2313.

HUGH WALLACE ET AL., Plaintiffs in Error,
vs.
MRS. ELLA ADAMS, for Herself and as Natural Guardian and Next Friend of HENRY MCSWAIN and ROMA MCSWAIN, Her Minor Children.

The Clerk will enter my appearance as Counsel for the Plaintiffs in Error.

WILLIAM I. CRUCE.
ANDREW C. CRUCE.
WILLARD R. BLEAKMORE.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 2313. Hugh Wallace, *et al.*, Pl'ffs in Error, *vs.* Mrs. Ella Adams, &c. Appearance. Filed Aug. 21, 1905, John D. Jordan, Clerk. William I. Cruce, Andrew C. Cruce, Willard R. Bleakmore, Counsel for Pl'ffs in Error.

(Appearance of Counsel for Defendants in Error.)

And on the twenty-first day of October, A. D. 1905, the appearance of counsel for the defendants in error was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

No. 2313.

HUGH WALLACE ET AL., Plaintiffs in Error,
vs.
MRS. ELLA ADAMS ET AL.

The Clerk will enter my appearance as Counsel for the De-
31 fendants in Error.

H. H. BROWN.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 2313. Hugh Wallace, *et al.*, Pl'ffs in Error, *vs.* Mrs. Ella Adams *et al.* Appearance. Filed Oct. 21, 1905, John D. Jordan, Clerk. H. H. Brown, Ardmore, Ind. Ter., Counsel for Def'ts in Error.

(Stipulation to Make Corrections in Transcript of Record.)

And on the fourth day of December, A. D. 1905, a stipulation to make correction in transcript of record was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

Number 2313.

HUGH WALLACE ET AL., Plaintiffs,
vs.
MRS. ELLA ADAMS ET AL., Defendants.

We have examined the decree of the United States Court for the Southern District of the Indian Territory, in the case of J. M. Hill *et al. vs.* the Choctaw Nation, as well as the second amended answer of the defendant, and the bill of exceptions filed herein, and we state to the court that in printing the record, an error has been committed by the printer, by omitting the name of B. C. Hill, after the name of Grover Hill, on page 5 of the transcript of the record herein.

In order to avoid the necessity of procuring a writ of certiorari, we agree that the record may be corrected by the Clerk of this Court's

inserting the name of B. C. Hill on page 5 of the record, just after the name Grover Hill.

CRUCE, CRUCE & BLEAKMORE,
Attorneys for Plaintiffs in Error.
H. H. BROWN,
Attorneys for Defendants in Error.

32 (Endorsed:) No. 2313. Hugh Wallace *et al.*, Pl'ffs in Error, *vs.* Mrs. Ella Adams *et al.* Stipulation to make correction in transcript of record. Filed Dec. 4, 1905, John D. Jordan, Clerk.

(Order of Submission.)

And on the fourth day of December, A. D. 1905, in the record of the proceedings of said Circuit Court of Appeals is an order of submission in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1905.

MONDAY, *December* 4, 1905.

No. 2313.

HUGH WALLACE ET AL., Plaintiffs in Error,
vs.
MRS. ELLA ADAMS ET AL.

In Error to the United States Court of Appeals in the Indian Territory.

This cause having been called for hearing in its regular order, and counsel for defendants in error not being present to orally argue the same, the cause was taken as submitted on the brief filed in behalf of defendants in error. Thereupon the cause was argued by Mr. Andrew C. Cruce for the plaintiffs in error and the cause was submitted to the Court upon the transcript of record from said United States Court of Appeals in the Indian Territory and the briefs of counsel for the respective parties filed herein.

(Opinion.)

And on the twenty-first day of February, A. D. 1906, an opinion of said Circuit Court of Appeals was filed in said cause, in the words and figures following, to-wit:

33 United States Circuit Court of Appeals, Eighth Circuit.

No. 2313, December Term, A. D. 1905.

HUGH WALLACE ET AL., Plaintiffs in Error,
vs.
MRS. ELLA ADAMS, for Herself and as Natural Guardian and Next Friend of HENRY MCSWAIN and ROMA MCSWAIN, Her Minor Children, Defendants in Error.

In Error to the United States Court of Appeals in the Indian Territory.

Mr. A. C. Cruce (Mr. W. I. Cruce and Mr. W. R. Bleakmore were with him on the brief) for plaintiffs in error.

Mr. Thomas Norman and Mr. H. H. Brown submitted a brief for defendants in error.

Mr. George A. Mansfield, Mr. J. F. McMurray and Mr. Melven Cornish filed a brief in behalf of the Choctaw and Chickasaw Nations as *amici curiæ*.

Before Sanborn, Hook and Adams, Circuit Judges.

Syllabus.

1. Citizenship in Indian Tribes—Power to Determine Legislative, Not Judicial.—The power conferred upon the Dawes Commission and the United States Courts in the Indian Territory by the act of June 10, 1896, 29 Stat. 339, 340, and upon the Supreme Court by the act of July 1, 1898, 30 Stat. 591, to determine who were citizens of the Choctaw and Chickasaw nations, was legislative and not judicial, and judgments thereunder were subject to any subsequent legislation of the United States respecting the question of citizenship, which was enacted before allotments of lands were made to successful litigants.
2. Same—Judgments of Citizenship Confer no Vested Rights against United States Before Allotments.—Claimants of citizenship who secured judgments in their favor, which were final under these acts when they were rendered, and took possession of, and demanded suitable lands as their allotments, before their judgments were made reviewable, acquired no vested rights therein against subsequent legislation enacted before the lands
34 were allotted to them.

3. Same—Judgments of Citizenship Reviewable by Subsequent Act of Congress, Otherwise Conclusive on Parties.—The judgments of citizenship rendered by the courts were conclusive upon the parties in the absence of subsequent legislation, but, though final when rendered, were voidable and reviewable by subsequent acts of Congress enacted before allotments of land were made under them.
4. Citizenship Court—Act of July 1, 1902, Creating, Constitutional and Valid.—The act of July 1, 1902, 32 Stat. 641, whereby a citizenship court was created and empowered to review the final judgments of the courts of the United States under the act of June 10, 1896, which had been affirmed by the Supreme Court, was constitutional and valid against successful litigants who had not procured allotments before its passage.
5. Territorial Courts Legislative, Not Constitutional.—The United States Courts in the territories and the Supreme Court in reviewing their decisions do not exercise the judicial power granted by article 3 of the Constitution, but a jurisdiction conferred upon them by the legislative department of the Government by virtue of the sovereignty of the nation and the authority granted to Congress by section 3, article 4, of the Constitution, to dispose of, and make all needful rules and regulations respecting the territory belonging to the United States.
6. Courts of Indian Territory Have Jurisdiction of Ejectment for Indian Allotment.—The United States Courts in the Indian Territory have jurisdiction of an action of ejectment brought by an Indian allottee against one in possession of his allotment.
7. Indian Allotment—Title of Allottee Chargeable in Equity in those Courts with Trust for Rightful Claimant.—The United States Courts in the Indian Territory have jurisdiction in equity to charge the legal title to land evidenced by a certificate of allotment issued by the Dawes Commission under the direction of the Secretary of the Interior, with a trust in favor of the rightful claimant, either on account of an error of the commission in the construction of the law, or its misapprehension of the facts induced through fraud or gross mistake.
8. Allotment by Dawes Commission or Like Effect as Patent by Land Department.—The jurisdiction of the Dawes Commission, under the direction of the Secretary of the Interior, and the effect of their action in the allotment of lands of the Choctaw and Chickasaw nations are the same as the jurisdiction and the effect of the action of the land department of the United States in the disposition by patent of the public lands within its control.
9. Jurisdiction of Person Presumed from Recital in Decree of Service of Notice.—The recital in a judgment or decree that a re-
35 quired notice was "given to the defendants in conformity of law" raises the presumption of due service and of jurisdiction of the persons in the absence of any inconsistent record or evidence.

SANBORN, *Circuit Judge,* delivered the opinion of the court:

This case is presented to test the validity of the decree of the Choctaw and Chickasaw citizenship court of December 17, 1902, which by its terms annulled all the judgments and decisions of the United States Courts in the Indian Territory which had admitted persons to citizenship under the act of June 10, 1896, in either the Choctaw or Chickasaw nation of Indians. These nations were the owners of a large and valuable tract of land in common, so that each and every member of each tribe had an equal undivided interest in the whole. Treaty with the Choctaw nation of September 27, 1830, article II, 7 Stat. 333; Treaty with the Choctaws and Chickasaws of June 22, 1855, articles I, II and III, 11 Stat. 611, 612. By the act of March 3, 1893, the Commission to the Five Civilized Tribes, generally known as the Dawes Commission, was created and empowered to negotiate an extinguishment of the tribal title to these lands and an allotment thereof to the members of the tribes in severalty. 27 Stat. 645, c. 209, §16. As soon as the allotment of these lands to the members of the tribes in severalty became imminent, citizenship therein became desirable. Many sought membership in the tribes whose claims to that relation were not conceded by the nations and it became necessary to determine in some way who were the lawful citizens of these Indian tribes. Each nation had a roll of its acknowledged citizens and each denied the right of many applicants to membership. In this state of the case, the United States, by the act of June 10, 1896, 29 Stat. 339, 340, c. 398, (1) confirmed the rolls of citizenship of the tribes as they then existed, (2) authorized and required the Dawes Commission to hear the application and to determine the right of each applicant for citizenship in either of these tribes, (3) granted an appeal to the United States District Court in the Indian Territory to each party aggrieved by a decision of the commission upon this issue of citizenship, (4) declared that the judgment of that court should be final, and (5) required the commission to make a complete roll of the citizens of each of the tribes and to include therein the names of those whose rights of citizenship should be sustained by the courts. Hill, one of the defendants below in this action, and the only one whose rights it is necessary to consider because all the other defendants claim under him, was not enrolled or acknowledged by the Choctaw nation as one of its citizens, but was in fact a member of the tribe by blood and entitled to all the rights of a citizen therein. He applied to the Dawes Commission to be admitted to membership, the commission denied his application, he appealed to the United States Court for the Southern District of the Indian Territory and on March 8, 1898, that court adjudged that he was a member of the Choctaw tribe by blood and that he should be admitted thereto as a citizen. Immediately thereafter and during that month he took possession of the land which is the subject of this action. This land is a tract not more valuable or extensive than he would be entitled to receive as his allotment if he were

enrolled as a citizen of the Choctaw nation. Before June,
36 1898, he placed improvements of the value of at least $1000 upon this land and has ever since retained the possession thereof with the intent to secure the same as his allotment.

On June 28, 1898, and while he was thus in possession of the land, Congress passed an act whereby it consented to the Atoka agreement with the Choctaw and Chickasaw nations of April 23, 1897, empowered the Dawes Commission to allot the lands of these tribes to their members in severalty and provided that any member should be entitled to receive his allotment out of the lands in his possession if he chose to do so. 30 Stat. 495, 498. Hill made this choice. On July 1, 1898, Congress granted to the tribes an appeal to the Supreme Court from the judgment of March 8, 1898, in favor of Hill, and from all other judgments in the United States Courts in the Indian Territory in citizenship cases which involved the constitutionality or validity of any legislation affecting citizenship or the allotment of Indian lands. 30 Stat. 591, c. 545. The Choctaw nation appealed from the judgment in favor of Hill and his judgment was affirmed by the Supreme Court on May 15, 1899. Stephens *v.* Cherokee Nation, 174 U. S. 445. In the proceedings which resulted in judgments of admission to citizenship in either the Choctaw or the Chickasaw nation in the United States Courts notice had been given to only one of these nations and the courts had tried the actions upon the appeals *de novo*. The Indian nations insisted that these proceedings were erroneous and that the judgments were therefore unjust. On March 21, 1902, an agreement was made between the United States and the Choctaw and Chickasaw nations, which was confirmed by the act of Congress of July, 1902. 32 Stat. 641. This agreement and act were to the effect that the Choctaw and Chickasaw citizenship court, to be composed of three judges to be appointed by the President and confirmed by the Senate, should be created, that this court, upon the institution of a suit in equity therein by either or both of these tribes against ten persons who had been admitted to citizenship or enrollment by the terms of the judgments of the United States courts in the Indian Territory, as representatives of all persons similarly situated, should inquire and determine (1) whether or not notice to each of the two nations was indispensable to the proceedings and judgments of admission to citizenship in those courts, (2) whether the proceedings of those courts should have been confined to a review of the action of the Dawes Commission upon the papers and evidence submitted to it or should have extended to a trial of the actions *de novo*, and (3) whether or not the judgments of the United States Courts should be annulled on account of either or both of these alleged irregularities. The act and agreement also provided that in case the citizenship court should decide that the judgments of admission to citizenship by the United States Courts in the Indian Territory should be annulled or vacated, the papers in any action and that suit, wherein such a judgment had been rendered, should, upon seasonable application of either party, be transferred to the citizenship court which should proceed to a hearing and determination of it as the United States Court ought to have

proceeded, that the citizenship court should have appellate jurisdiction of the judgments of the United States courts in citizenship cases and that its judgments should in all cases be final. Under this agreement and act the two nations brought a test suit in this citizenship court against J. W. Riddle and nine other persons who had
37 been adjudged entitled to citizenship by the courts, as representatives of all others similarly situated, and on December 17, 1902, they obtained a decree from that court to the effect that the judgments of the United States Courts in the Indian Territory whereby persons were admitted to citizenship in the Choctaw and Chickasaw nations, under the act of June 10, 1896, were annulled and vacated. The defendant, Hill, did not apply for a transfer to the citizenship court of the action in which he had secured his judgment and no further proceedings were taken therein.

The action now in this court is an action of ejectment. Henry McSwain and Roma McSwain by their guardian and next friend were the plaintiffs below and they are acknowledged citizens of the Chickasaw nation who have received allotments of these lands from the Dawes Commission and have brought this action against Hill and those claiming under him to recover possession of them. Hill has presented his judgment in the United States Court to the Dawes Commission, has demanded his enrollment as a citizen of the Choctaw nation and the allotment to him of the land in dispute, but the commission has refused his request on the sole ground that his judgment was annulled by the decree of the citizenship court. Hill insists that that decree is void and under the legislation which has been recited he is entitled to retain possession and to receive the land in dispute as his allotment unless his judgment of admission as a citizen of the Choctaw nation has been avoided by that decree. The facts which have been recited appear in the complaint and answer in the action in hand or have been admitted by counsel in their briefs, and the defendant, Hill, prayed in his answer that the case be transferred to the equity docket, that his title be quieted and that he have all other proper relief. A demurrer to his answer was sustained by the trial court and by the appellate court in the Indian Territory.

We are met at the threshold of the investigation of this case by the objection that the United States Court for the Southern District of the Indian Territory had no jurisdiction of this action because the land in dispute had been allotted to the plaintiffs by the Dawes Commission and by the act of July 1, 1902, exclusive jurisdiction had been conferred upon that commission to determine under the direction of the Secretary of the Interior all matters relating to the allotment of land and to issue allotment certificates which should be conclusive evidence of the right of the allottee to the land therein described, and authority was given to the Indian agent at Union Agency to place allottees in possession of their lands upon application to him, free from the writ or process of any court. 32 Stat. 641, pars. 23, 24. No application, however, appears to have been made to the Indian agent to place the plaintiffs in possession of the land here in dispute and the rights and powers of the agent are not in question in this case. The plaintiffs commenced an action of

ejectment in the trial court below which was met by the plea that in equity and good conscience the land which was its subject and the possession thereof were the property of the defendant and by a prayer for proper relief in equity. Jurisdiction of such an action was clearly granted to the courts in the Indian Territory by the act of June 7, 1897, 30 Stat. 83, which provides that on and after January 1, 1898, those courts shall have original and exclusive jurisdiction and authority to try and determine all civil causes in law and equity thereafter instituted, as well as by section 3 of the act of June 28, 1898, 30 Stat. 496, c. 517.

38 Nor did the grant to the Dawes Commission and to the Secretary of the Interior of exclusive jurisdiction to determine matters relating to the allotment of land and to issue certificates which are conclusive evidence of the right of the allottee to the land therein described, deprive those courts of their jurisdiction in equity, after the commission and the secretary have exercised this power and exhausted their jurisdiction, to determine whether by error of law or through fraud or gross mistake the commission and the secretary have failed to allot the land to the party who was under the law entitled to it and have assigned it to one who had no right to it. The jurisdiction of the commission and of the secretary and the effect of their action in the allotment of the lands of the Choctaw and Chickasaw nations are the same in effect as the jurisdiction and effect of the action of the land department of the United States in the disposition of the public lands within its control. The commission under the direction of the secretary constitutes a special tribunal vested with the judicial power to hear and determine the claims of all parties to allotments of these lands and to execute its judgments by the issue of the allotment certificates which constitute conveyances of the right to the lands to the parties who, it decides, are entitled to the property. This tribunal undoubtedly has exclusive jurisdiction to determine such claims and to issue such a conveyance. The allotment certificate when issued, like a patent to land, is dual in its effect. It is an adjudication of the special tribunal, empowered to decide the question, that the party to whom it issues is entitled to the land, and it is a conveyance of the right to this title to the allottee. U. S. *v.* Winona & St. Peter R. Co., 11 C. C. A. 96, 103, 67 Fed. 948, 955. Like a patent it is impervious to collateral attack. But, as in the case of a patent, if the commission or the secretary has been induced to issue the allotment certificate to the wrong party by an erroneous view of the law or by a gross or fraudulent mistake of the facts, the rightful claimant is not remediless. He may avoid the decision and charge the legal title to the lands in the hands of the allottee, as he may that of the grant to a patentee, with his equitable right to it either on the ground that upon the facts found, conceded or established without dispute at the hearing before the special tribunal, its officers fell into an error in the construction of the law applicable to the case which caused them to refuse to issue the certificate to him and to give it to another, or that through fraud or gross mistake it fell into a misapprehension of the facts proved before it which had a like effect. James *v.* Germania Iron Co., 46 C. C. A. 476,

479, 107 Fed. 597, 600. In the case in hand all parties concede in the briefs which have been submitted for our consideration that the land in question has been allotted and that allotment certificates have been issued to the plaintiffs and the questions presented will be considered in view of this admission. The defendant avers that the commission failed to allot the land to him and assigned it to the plaintiffs by reason of its erroneous view of the law in that it held that his judgment of March 8, 1898, was vacated by the decree of the citizenship court. If that ruling was erroneous the defendant was entitled to the possession of the property and to a decree in equity that the right and title which the plaintiffs had secured by the allotment certificates were held by them in trust for his benefit and the court in the Indian Territory had ample power to grant this relief.

39 Attention is called to section 2 of the act of June 28, 1898, 30 Stat. 495, which provides that when in the progress of any civil suit in the United States Court in any district in the Indian Territory it shall appear to the court that the property of any Indian tribe is in any way affected by the issues being heard the court is authorized and directed to make such tribe a party, and it is contended that both by virtue of this provision and under the general rule in equity the Choctaw and Chickasaw tribes were indispensable parties to this action. But the lands in controversy here have been allotted to the plaintiffs below. They are no longer the property of the tribes and none of their property can in any way be affected even remotely by this action unless the averments of the answer entitle the defendant to relief. The courts below were of the opinion that they did not, and hence it did not appear to them that any property of the tribes would be affected by the issues in this action. Until their opinions in this regard are overruled it will not so appear, and if they should be, this case must be remanded for testimony and hearing and there will then be ample opportunity for them to consider and determine whether or not the Indian nations should be made parties. The record before us does not show that this question has yet been presented to the courts below and hence it is not now here for our consideration or decision. We come then to the crucial question in the case.

The Constitution of the United States had been extended over and put into effect in the Indian Territory before the legislation involved in this suit was enacted and counsel for the defendant, Hill, contend that because his judgment of admission to citizenship of March 8, 1898, was by the terms of the act of June 10, 1896, final when it was rendered and he took possession of and improved the land he occupies before June 28, 1898, and because by the act of the latter date, 30 Stat. 498, the right to select this land which was then in his possession as his allotment was granted to him, his right thereto then vested, so that Congress had no power either by direct enactment or by the creation of a commission or court to review or annul his judgment or to deprive him of his right to this allotment. In support of this position they cite Rutherford *v.* Greene's heirs, 2 Wheat. 196; Gaines *v.* Nicholson, 9 How. 356; U. S. *v.* Brooks, 10 How. 442; Doe *v.*

Wilson, 23 How. 457; Crews *v.* Burcham, 1 Black 352; Best *v.* Polk 18 Wall. 112; New York Indians *v.* U. S. 170 U. S. 1, and Jones *v.* Meehan, 175 U. S. 1. The argument is persuasive and it is fortified by the suggestions that the defendant's judgment had been affirmed by the Supreme Court in 1899 and that the citizenship court was in reality a commission and not a judicial tribunal. But none of the authorities cited contains a decision that one has a vested right in a judgment of citizenship which the legislative department of the United States may not lawfully disturb, although one of the ultimate consequences of such a judgment, if undisturbed, might be an interest in land and other property. The opinions in the cases cited are limited to rulings that grants to designated persons or classes of persons are grants *in praesenti* and that after they have taken effect the rights to the property have vested so that they may not be lawfully destroyed by legislation without compensation. The contention of counsel based upon decisions of this nature fails to give adequate consideration to the origin and character of the defendant's claim, to the nature of the issue determined by his judgment and to the relation of the legislative, executive and judicial departments of the United States to this claim and issue. Prior to the act of June 10, 1896, the right and the power to determine who were the citizens of the Choctaw and Chickasaw nations was vested in those tribes. It was one of the fast-disappearing attributes of the domestic dependent nationality of the Choctaws and Chickasaws, which was vested exclusively in their nations and was guaranteed to them by treaties with the United States. 7 Stat. 333, 334, §4; 11 Stat. 611, 612, art. 8; Buster *v.* Wright, 68 C. C. A. 505, 508, 135 Fed. 947, 950. Those nations had rejected the defendant's claim that he was a citizen of the Choctaw nation. That issue had become *res adjudicata* between him and the nations and it was not cognizable by the judiciary of the United States or of the Indian Territory. No court had any jurisdiction to determine that he was a member of the Choctaw tribe or that he should be admitted to citizenship therein. He was without remedy for the lawful refusal of the Choctaw nation to admit him to citizenship and hence without right to membership in that tribe.

The United States by its superior might took from the Choctaw and Chickasaw nations the power to determine who their citizens should be, which had been repeatedly guaranteed to them by treaties, and authorized the Dawes Commission and the United States Court in the Indian Territory to decide this issue, by the act of June 10, 1896. Here is the origin of every right of the defendant involved in this action. The maintenance by him of any claim in any court necessarily concedes the power of the legislative department of the Government to create or to revive, and to enforce his demand for citizenship, because without that concession the provisions of the act of June 10, 1896, in this regard, are void and the defendant's claim is conclusively adjudged to be baseless by its rejection by the Choctaw nation. But if the legislative department of the United States had the constitutional power to create or to revive the defendant's claim and to enforce it, it necessarily had the same power

to determine whether or not it would revive or enforce it and to select its own method of deciding these questions. It might have determined this issue itself and have declared by direct enactment that the defendant, Hill, was a citizen of the Choctaw nation. It might have empowered a committee, an Indian agent, a commission, a board or a court, to examine and determine that question on its behalf, and as the determination of this question of citizenship was a purely legislative and administrative function and not a judicial one, Congress necessarily had the authority under the Constitution at any time before an allotment of land under its previous acts had been finally made to the defendant and his right to the land had thereby become vested, to repeal its previous legislation, to change its method of determining the issue, to strike down any decision that had been made under its previous acts, to prescribe a new method of deciding the question, or to refuse to determine it altogether and leave the claim of the defendant as it found it, conclusively barred by its rejection by the Choctaw nation. A striking and persuasive analogy to the power of the legislative department of the Government to determine this question of citizenship and to dispose of the lands of the tribes is found in its jurisdiction to dispose of the public lands of the United States. Congress is vested with lawful authority to dispose of these lands. It has authorized the land department of the United States to decide who are entitled to them under the general pre-emption, homestead and other acts provided for their disposition.

But the legislative department of the United States may at
41 any time before one, who has occupied and improved land with a view to its pre-emption, has completed all the preliminaries, entered and paid for the land he seeks to acquire, lawfully convey it to another, although the land department has already decided that the occupant is entitled to it. Occupation, improvement, compliance with the law and the favorable decisions of the land department give rise to valuable and enforceable rights to public land as against other claimants in the absence of subsequent legislation. Nothing short of entry and payment confer upon a settler vested rights against the United States which impair in any respect the plenary power of its legislative department to dispose of the land to another or to withdraw it from sale for the use of the Government. Campbell *v.* Wade, 132 U. S. 34, 38; Frisbie *v.* Whitney, 9 Wall. 187, 192; Yosemite Valley case, 15 Wall 77, 78; Hosmer *v.* Wallace, 97 U. S. 575, 581; Gonzales *v.* French, 164 U. S. 338, 344; Grisar *v.* McDowell, 73 U. S. 363; Trenouth *v.* San Francisco, 100 U. S. 251; La Abra Silver Min. Co. *v.* U. S., 175 U. S. 423; Emblen *v.* Lincoln Land Co., 42 C. C. A. 499, 503, 102 Fed. 559, 563. In the case last cited the complainant had instituted a contest in the land department in the year 1888 against an entryman, Weed, to secure a cancellation of his entry and to obtain for the contestant the right to enter the land which is granted by section 2, chapter 89, 21 Stat. 140, to any person who procures the avoidance of a previous entry. After a long series of adverse decisions the secretary of the interior finally in 1894 set aside the rulings which had been made and directed the local land officer to hear

the case anew. The complianant had paid fees to the land officers, had conducted his contest for six years, had finally secured an avoidance of the decisions against him and was pressing the case to a hearing before the local land officers where a time had been set for the trial, when Congress passed an act to the effect that the entry of Weed was confirmed and that a patent should be issued to him forthwith. This court decided in accordance with the opinions of the Supreme Court in the cases cited above that the contestant had acquired no vested rights against the United States and its legislation and that the act of Congress which granted the land to another was neither unconstitutional nor invalid. The act of July 1, 1902, 32 Stat. 641, which created the citizenship court and authorized it to review the judgment of the United States Court in the Indian Territory of March 8, 1898, in favor of the defendant, was of the same nature. It was but a modification or an amendment of, or an addition to, the method prescribed by the legislative department of the Government for the determination of the question whether or not the defendant, Hill, was a citizen of the Choctaw nation by its acts of June 10, 1896, 29 Stat. 340, and July 1, 1898, 30 Stat. 591. When it was passed the Dawes Commission to whom Congress had delegated the power to distribute the lands of the tribes had not allotted the land in dispute to the defendant. He had therefore acquired no vested right in it as against subsequent legislation of the United States because until such an allotment was made all the proceedings determinative of citizenship and of distribution which derived their force and effect from the legislative power of the United States alone were necessarily subject to the further exercise of that authority.

The fact that the effect of the act of July 1, 1902, has been to avoid final judgments of the United States Courts in the Indian Territory, which had been affirmed by the Supreme Court, has not been disregarded. In the rendition of those judgments, however,
those courts were not exercising any of the judicial power of
42 the United States conferred by the third article of the Constitution. They were not constitutional, but legislative courts of the United States, exercising a jurisdiction conferred upon them by Congress by virtue of the sovereignty of the nation and of section 3 of article 4 of the Constitution, which empowers Congress to dispose of, and make all needful rules and regulations respecting the territory belonging to the United States. American Ins. Co. *v.* Canter, 1 Pet. 511, 546; Benner *v.* Porter, 9 How. 235, 242, 243; Hornbuckle *v.* Toombs, 18 Wall. 648, 655; Good *v.* Martin, 95 U. S. 90, 98; Clinton *v.* Englebrecht, 13 Wall. 434, 447. In the case last cited Chief Justice Chase, speaking of the courts of the then Territory of Utah, said: "There is no Supreme Court of the United States, nor is there any District Court of the United States, in the sense of the constitution, in the Territory of Utah." Now, as the power conferred upon the courts in the Indian Territory and upon the Supreme Court respecting the decision of the question who were citizens of the Indian tribes, was purely legislative and administrative and the entire question still remained subject to congressional action, the legislative department had the same power at any time before

allotments were made and the rights of allottees became vested, to disregard or to authorize a review of the decisions of these courts by other tribunals that it would have had to have disregarded or reviewed the decisions of an Indian agent, a commission, or a committee, if it had conferred this power upon them. The decisions of the Supreme Court in Stephens *v.* Cherokee Nation, 174 U. S. 445, 488, and Cherokee Nation *v.* Hitchcock, 187 U. S. 294, 306, adequately sustain this conclusion. In the former case that court expressly decided that the defendant and others who had secured judgments of admission to citizenship under the act of June 10, 1896, which were final under the legislation in existence when they were rendered, had no vested rights therein or in the lands or property of the tribes to which these judgments would have entitled them, that the subsequent act of July 1, 1898, which gave to the tribes appeals to the Supreme Court from these judgments was constitutional and declared that "the lands and moneys of these tribes are public lands and public moneys, and are not held in individual ownership, and the assertion of any particular applicant that his right therein is so vested as to preclude inquiry into his status involves a contradiction in terms." Earlier decisions of that court are to the effect that the legislative department of the Government has ample power by subsequent enactment to grant a new trial or a review by a suitable tribunal of judgments final under the laws in force when they were rendered. Sampeyreac *v.* U. S., 7 Pet. 222, 235; Freeborn *v.* Smith, 2 Wall. 160; Garrison *v.* New York, 21 Wall. 196, 204; Freeland *v.* Williams, 131 U. S. 405, 412; Essex Public Road Board *v.* Skinkle, 140 U. S. 334. In Sampeyreac *v.* U. S., 7 Pet. 222, 235 a decree of a court which established a title to land was rendered on November 24, 1827. After this decree had become final under existing laws an innocent purchaser bought the established title. On May 8, 1830, Congress passed an act which authorized the claimants defeated by the original decree, which had then been final for more than two years, to maintain a bill of review to set it aside. Such a bill was exhibited, a decree was rendered thereon which avoided the original decree and took the property from the innocent purchaser, and the Supreme Court sustaind the act of Congress which allowed this review and the decree which followed it. There can be no
43 doubt under these decisions that Congress had plenary power to authorize a review of the final judgments of the courts in the Indian Territory and of the Supreme Court in these citizenship cases. The contention that the act of 1902 is unconstitutional because it is class legislation is answered by the decision of the Supreme Court in the Stephen case which sustained the act of July 1, 1898, which was of the same character. The suggestion that the citizenship court was a commission and not a judicial tribunal is immaterial, because the power of the legislative department of the Government to authorize the review of the judgments of citizenship by a commission, a committee, or an agent was as complete as it was to authorize that review by a court. It had plenary authority to review the judgments itself or to create or select a tribunal to its

liking for the purpose. In view of the considerations and authorities to which reference has now been made, our conclusions are:

The power conferred upon the Dawes Commission and the United States Courts in the Indian Territory by the act of June 10, 1896, and upon the Supreme Court by the act of July 1, 1898, to determine who were citizens of the Choctaw and Chickasaw nations was legislative and not judicial and all judgments and proceedings thereunder were subject to any subsequent legislation of the United States respecting the question of citizenship, which was enacted before allotments of land were made to the successful litigants under the previous legislation.

Claimants of citizenship who secured judgments in their favor which were final under the acts of 1896 and 1898 when they were rendered and took possession of, and demanded suitable tracts of land as their allotments, before their judgments were made reviewable, acquired no vested rights therein against subsequent legislation enacted before the lands were allotted to them.

The judgments of citizenship rendered by the courts were conclusive upon the parties to them in the absence of subsequent legislation; but, though final when rendered, they were voidable and reviewable by subsequent acts of Congress passed before allotments of land were made under them.

The act of July 1, 1902, whereby a citizenship court was created and empowered to review the final judgments of the courts of the United States under the act of June 10, 1896, which had been affirmed by the Supreme Court under the act of July 1, 1898, was constitutional and impregnable to the attacks of the successful litigants who had not secured allotments of land before its passage.

Finally counsel for defendant insist that he is not bound by the decree of the citizenship court (1) because he was not one of the ten persons named as defendants therein, but as Congress had plenary power to directly reverse the judgments of citizenship or to determine in what way they should be reversed, its enactment that the ten persons should stand as the representatives of all others similarly situated was not ineffective; (2) because there was no proof in the citizenship court, and there is no finding in the decree that he was one of the persons similarly situated with the ten defendants named, but the decree avoids all the judgments of the courts in the Indian Territory whereby in cases appealed from the decisions of the Dawes Commission under the act of June 10, 1896, any of the defendants named or any of the persons similarly situated was adjudged a citizen of the Choctaw or Chickasaw nation and the answer of the defendant in this action that upon such an appeal he secured a judgment of one of those courts that he was a citizen of the Choctaw nation sufficiently discloses the fact that he was similarly situated with the ten defendants named in the decree of the citizenship court and brings him clearly within its terms; (3) because the act
44 of 1902 required that notice of the pendency in the citizenship court of the suit there brought and of the time for answering the bill should be published for four weeks in two newspapers generally circulating in the Choctaw and Chickasaw nations

thirty days before the time for answering the bill expired, and the decree does not recite or adjudge that this notice was published (32 Stat. 647), but the ten defendants are named in the title of the decree as defendants "for themselves and as representatives of all persons similarly situated, claiming to be members of the Choctaw and Chickasaw nations, by virtue of alleged decrees of the United States Court for the Central and Southern Districts of the Indian Territory sitting respectively at South McAlester and Ardmore, and commonly known as Court Claimants," the decree recites: "The court finds that due and legal notice of the pendency and prayer of this suit has been given to the defendants herein in conformity of law" and it adjudges that the judgments in favor of those similarly situated as well as the judgments in favor of the ten defendants named and in favor of other defendants who appeared be annulled.

Counsel concede that the recital in the decree that the notice had been given "in conformity of law" is sufficient in the absence of any inconsistent record or evidence to raise the presumption of the legal publication of the notice and of the jurisdiction of the court over the persons of all who are affected by the decree (Applegate *v.* Lexington &c. Min. Co., 117 U. S. 255, 269; Foster *v.* Givens, 14 C. C. A. 625, 632, 67 Fed. 684, 691; Beattie *v.* Wilkinson, 36 Fed. 646; Rumfelt *v.* O'Brien, 57 Mo. 569, 572; Harris *v.* Lester, 80 Ill. 307, 315; Mulvey *v.* Gibbons, 87 Ill. 367, 380; 17 Am. & Eng. Enc. of Law 1082) were it not for the fact that this recital is limited by the words "the defendants herein," but they insist that these words refer to the ten defendants whose names are written in the title of the decree and to them alone. Such a construction, however, is inconsistent with the decree against those similarly situated which could have been lawfully rendered only in case the publication of the notice had been made, and the words "the defendants herein" must therefore be given a broader interpretation and must include those who were similarly situated as well as those whose names were written in the title of the decree.

The defendant pleaded the decree of the citizenship court in his answer and took upon himself the burden of showing by adequate averments why it did not estop him from asserting that he was a citizen of the Choctaw nation. He alleged, it is true, that he was not similarly situated with the defendants named in that decree, but he failed to set forth any difference between his situation and that of the ten defendants there named, while his answer disclosed the fact that he had secured a like judgment upon a similar appeal. He alleged, it is true, that he was not a party to the suit in the citizenship court and that no notice was ever served upon him therein, but he failed to allege that the notice of the pendency of that action was not published in the manner directed by the act of Congress. These averments were insufficient to withdraw the defendant from the estoppel of the decree, and the judgments of the courts in the Indian Territory against him in the action now under consideration must be *affirmed*.

It is so ordered.

Filed February 21, 1906.

45 *(Judgment.)*

And on the twenty-first day of February, A. D. 1906, in the record of the proceedings of said Circuit Court of Appeals is a judgment in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1905.

WEDNESDAY, *February* 21, 1906.

No. 2313.

HUGH WALLACE, WILL WALLACE, VERGE McGOODWIN, CHARLES SHANNON, JOHN HUNT, JOHN PERKINS and B. C. HILL, Plaintiffs in Error,

vs.

MRS. ELLA ADAMS, for Herself and as Natural Guardian and Next Friend of HENRY McSWAIN and ROMA McSWAIN, Her Minor Children.

In Error to the United States Court of Appeals in the Indian Territory.

This cause came on to be heard on the transcript of the record from the United States Court of Appeals in the Indian Territory, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said United States Court of Appeals, and the judgment of the United States Court for the Southern District of Indian Territory, in this cause, be, and the same are each hereby, affirmed with costs; and that Mrs. Ella Adams, for herself and as natural Guardian and next friend of Henry McSwain and Roma McSwain, her minor children, have and recover against Hugh Wallace, Will Wallace, Verge McGoodwin, Charles Shannon, John Hunt, John Perkins and B. C. Hill the sum of twenty dollars for their costs herein and have execution therefor.

It is further ordered that this cause be, and the same is hereby, remanded to the United States Court for the Southern District of the Indian Territory, with directions for proceedings therein according to law and justice.

February 21, 1906.

46 *(Petition for Writ of Error.)*

And on the ninth day of April, A. D. 1906, the petition for a writ of error was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals for the Eighth Circuit.

HUGH WALLACE ET AL., Plaintiffs in Error,
vs.
MRS. ELLA ADAMS, for Herself and as Natural Guardian and Next Friend of HENRY MCSWAIN and ROMA MCSWAIN, Her Minor Children, Defendants in Error.

Petition for Writ of Error.

Your petitioners, Hugh Wallace, Will Wallace, Virge Goodwin, Charles Shannon, John Hunt, John Perkins and B. C. Hill, Plaintiffs in Error, in the above entitled cause, respectfully show that the above entitled cause is now pending in the United States Circuit Court of Appeals for the Eighth Circuit, and that a judgment has therein been rendered on the 21st day of February, 1906, affirming a judgment of the United States Court of Appeals for the Indian Territory, which in turn affirmed a judgment of the United States Court for the Southern District of the Indian Territory; and that the matter in controversy in said suit exceeds One Thousand Dollars, besides costs; and that the jurisdiction of none of the courts above mentioned, is or was dependent, in any wise, upon the opposite parties to the suit or controversy, being aliens and citizens of the United States, or citizens of the different States; and that this cause does not arise under the patent laws, nor the revenue laws, nor the criminal laws, and that it is not an admiralty case; and that it is a proper case to be reviewed by the Supreme Court of the United States upon writ of error; and therefore your petitioners would respectfully pray that a writ of error be
47 allowed them in the above entitled cause, directing the Clerk of the United States Circuit Court of appeals to send the record and proceedings in said cause, with all things concerning the same, to the Supreme Court of the United States, in order that the errors complained of in the assignment of errors herewith filed by said plaintiffs in error may be reviewed, and if error be found, corrected according to the laws and customs of the United States.

A. C. CRUCE,
Attorney for Plaintiffs in Error.

The foregoing petition is granted and writ of error allowed, as prayed for, upon the plaintiffs giving bond according to law, in the sum of $1000.00.

DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

Mar. 27th, 1906.

(Endorsed:) # 2313. Hugh Wallace *et al.*, Plaintiffs in Error, *vs.* Mrs. Ella Adams *et al.* Petition for Writ of Error. Filed Apr. 9, 1906, John D. Jordan, Clerk.

(Assignment of Errors.)

And on the ninth day of April, A. D. 1906, an assignment of errors was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

HUGH WALLACE ET AL., Plaintiffs in Error,
vs.
MRS. ELLA ADAMS, for Herself and as Natural Guardian and Next Friend of HENRY MCSWAIN and ROMA MCSWAIN, Her Minor Children, Defendants in Error.

Assignment of Errors.

And now come the Plaintiffs in Error, Hugh Wallace, Will
48 Wallace, Virge Goodwin, Charles Shannon, John Hunt, John Perkins and B. C. Hill, by their attorney, A. C. Cruce, and say that in the record and proceedings aforesaid of said United States Circuit Court of Appeals for the Eighth Circuit in the above entitled cause, and in the rendition of the final judgment therein, manifest error hath intervened, to the injury of said Plaintiffs in Error in this, to-wit:

First. Said Circuit Court of Appeals erred in entering judgment affirming the judgment of the United States Court of Appeals for the Indian Territory, and the judgment of the United States Court for the Southern District of the Indian Territory, for the tract of land containing two hundred and seventy acres, described upon the record in said cause, and cost of suit, entered on the 21st day of February, 1906, in favor of said Defendants in Error and against said Plaintiffs in Error.

Second. Said Circuit Court of Appeals erred in not reversing the said judgment of the United States Court of Appeals for the Indian Territory, and of the United States Court for the Southern District of the Indian Territory, and in not remanding said cause to the said United States Court for the Southern District of the Indian Territory.

Third. The said Circuit Court of Appeals erred in not sustaining the first assignment of error upon the record in said cause.

Fourth. The said Circuit Court of Appeals erred in not sustaining the second assignment of error upon the record in said cause.

Fifth. The said Circuit Court of Appeals erred in not sustaining the third assignment of error, upon the record in said cause.

Sixth. The said Circuit Court of Appeals erred in not sustaining the fourth assignment of error upon the record in said cause.

Seventh. Said Circuit Court of Appeals erred in not sustaining the fifth assignment of error upon the record in said cause.

Eighth. The said Circuit Court of Appeals erred in holding
49 that the power conferred upon said United States Courts in the Indian Territory by the Act of June 10, 1896, and upon the Supreme Court of the United States by the Act of July 1, 1898, was legislative and not judicial, and that all judgments and proceedings of said courts were subject to be set aside by subsequent legislation.

Ninth. Said Circuit Court of Appeals erred in holding that the judgments declaring parties to be entitled to Indian citizenship, under the Act of June 10, 1896, and which were affirmed by the Supreme Court, under the Act of July 1, 1898, were not the result of the exercise of judicial power, and that said legislative department "Had the same power at any time before allotments were made, and the rights of allottees became vested, to disregard, or to authorize, a review of the decisions of those courts, by other tribunals, that it would have had to have disregarded or reviewed the decisions of an Indian Agent, a Commission, or a Committee, if it had conferred this power upon them."

Tenth. The said Circuit Court of Appeals erred in holding that the Plaintiff in Error, Hill, who took possession of, and erected valuable improvements upon, the land in controversy in this action, by virtue of a judgment of the United States Court for the Southern District of the Indian Territory declaring him to be a member of the Choctaw Tribe of Indians (which judgment was affirmed by the Supreme Court of the United States), took no vested interest in the lands in controversy, and that Congress had the right thereafter to authorize any subordinate tribunal to set aside the judgments of said courts, and to deprive the plaintiff in error of said land, without compensation.

Eleventh. Said Circuit Court of Appeals erred in failing to hold that the two questions which were submitted to the determination of the Choctaw and Chickasaw Citizenship Court, by the Act of July 1, 1902, had already been determined by the judgment of the Supreme Court in the case of Stephens *vs.* Cherokee Nation, 174 U. S. 445, and had thus become *res judicata*.

Twelfth. Said Circuit Court of Appeals erred in holding
50 that "Claimants of citizenship, who secured judgment in their favor, which were final under the Acts of 1896 and 1898, when they were rendered, and took possession of and demanded suitable tracts of land as their allotments before their judgments were made reviewable, acquired no vested rights therein against subsequent legislation enacted before allotments were made to them."

Thirteenth. The said Circuit Court of Appeals erred in holding that "The Act of July 1, 1902, whereby a citizenship court was created and empowered to review the final judgments of the courts of the United States, under the Act of June 10, 1896, which had been affirmed by the Supreme Court under the Act of July 1, 1898, was constitutional and impregnable to the attacks of the successful litigants who had not secured allotments of land before its passage."

Wherefore the said plaintiffs in Error, Hugh Wallace, Will Wallace, Virge Goodwin, Charles Shannon, John Hunt, John Perkins and B. C. Hill, pray that for the errors aforesaid, and other errors appearing in the record of the United States Circuit Court of Appeals in the above entitled cause, to the prejudice of the plaintiffs in error, the said judgment of said United States Circuit Court of Appeals be reversed, annulled and for naught esteemed, and that said cause be remanded to the United States Court for the Southern District of the Indian Territory, with instructions to grant a new trial in said cause, or for such further proceedings in said cause as may be determined upon by this Honorable Court, to the end that justice may be done in the premises.

A. C. CRUCE,
Attorney for Plaintiffs in Error.

(Endorsed:) # 2313. Hugh Wallace, *et al.*, Plaintiffs in Error, *vs.* Mrs. Ella Adams, *et al.* Assignment of Errors. Filed Apr. 9, 1906, John D. Jordan, Clerk.

(*Bond on Writ of Error.*)

And on the ninth day of April, A. D. 1906, a bond on writ of error was filed in said cause, in the words and figures follow-
51 ing, to-wit:

Know all men by these presents, That we, Hugh Wallace, Will Wallace, Verge McGoodwin, Charles Shannon, John Hunt, John Perkins and B. C. Hill, as principal-, and —— —— as sureties, are held and firmly bound unto Mrs. Ella Adams for herself and as natural guardian and next friend of Henry McSwain and Roma McSwain, her minor children, in the full and just sum of one thousand (1,000) dollars, to be paid to the said Mrs. Ella Adams for herself and as such natural guardian and next friend aforesaid, her certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of ——, in the year of our Lord one thousand nine hundred and six.

Whereas, lately at a United States Circuit Court of Appeals for the Eight Circuit in a suit depending in said Court, between Hugh Wallace, Will Wallace, Verge Goodwin, Charles Shannon, John Hunt, John Perkins and B. C. Hill, plaintiffs in error, and Mrs. Ella Adams, for herself and as natural guardian and next friend of Henry McSwain and Roma McSwain, her minor children, defendant in error, a judgment was rendered against the said plaintiffs in error and the said plaintiffs in error having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said defendant in error citing and admonishing her to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date thereof.

Now, the condition of the above obligation is such, That if the said plaintiffs in error shall prosecute said writ to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

HUGH WALLACE,
WILL WALLACE,
VERGE GOODWIN,
CHAS. SHANNON,
JOHN HUNT,
JOHN PERKINS, AND
B. C. HILL, [SEAL.]
52 LEE CRUCE,
G. W. STUART. [SEAL.]

Sealed and delivered in presence of—
——— ———.

Approved by—
DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

I am personally acquainted with the sureties to the within supersedeas bond, and I certify that their financial condition is such as amply to secure the conditions of the bond.

HOSEA TOWNSEND,
U. S. Judge Southern District Indian Territory.

(Endorsed:) No. 2313. Hugh Wallace, *et al.*, Plaintiffs in Error, *vs.* Mrs. Ella Adams, *et al.* Bond on Writ of Error. Filed Apr. 9, 1906. John D. Jordan, Clerk.

(*Writ of Error.*)

And on the ninth day of April, A. D. 1906, a writ of error was filed in said cause, the original of which, with the Clerk's return endorsed thereon, is hereto attached and herewith returned:

53 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the United States Circuit Court of Appeals for the Eighth Circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court of Appeals before you, or some of you, between Hugh Wallace, Will Wallace, Verge Goodwin, Charles Shannon, John Hunt, John Perkins, and B. C. Hill, plaintiffs in error, and Mrs. Ella Adams, for herself and as natural guardian and next friend of Henry McSwain and Roma

McSwain, her minor children, defendant in error, a manifest error hath happened, to the great damage of the said plaintiffs in error as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 3d day of April, in the year of our Lord one thousand nine hundred and six.

[Seal of the Supreme Court of the United States.]

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

54 [Endorsed:] No. 2313. Hugh Wallace, *et al.*, Plaintiffs in Error, *vs.* Mrs. Ella Adams, *et al.* Writ of Error. Filed Apr. 9, 1906. John D. Jordan, Clerk.

Return to Writ.

UNITED STATES OF AMERICA, *Eighth Circuit, ss:*

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the record and proceedings in the within entitled case, with all things concerning the same.

In Witness Whereof, I hereto subscribe my name, and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this fourteenth day of April, A. D. 1906.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

55 *(Citation.)*

And on the ninth day of April, A. D. 1906, a citation was filed in said cause, the original of which, with the proof of service endorsed thereon, is hereto attached and herewith returned:

56 UNITED STATES OF AMERICA, *ss:*

To Mrs. Ella Adams, for herself and as natural guardian and next friend of Henry McSwain and Roma McSwain, her minor children, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the United States Circuit Court of Appeals for the Eighth Circuit wherein Hugh Wallace, Will Wallace, Verge Goodwin, Charles Shannon, John Hunt, John Perkins, and B. C. Hill are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable David J. Brewer, Associate Justice of the Supreme Court of the United States, this third day of April, in the year of our Lord one thousand nine hundred and six.

DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

57 On this 6th day of April, in the year of our Lord one thousand nine hundred and six, personally appeared before me, the subscriber, S. H. Butler, and makes oath that he delivered a true copy of the within citation to H. H. Brown, Attorney of Record for Mrs. Ella Adams, for herself and as natural guardian and next friend of Henry McSwain and Roma McSwain, her minor children.

S. H. BUTLER.

Sworn to and subscribed the 6th day of April, A. D. 1906.

[Seal Notary Public, Southern District, Indian Territory.]

ROBUTA NIBLACK,
Notary Public.

[Endorsed:] No. 2313. Hugh Wallace, *et al.*, Plaintiffs in Error, vs. Mrs. Ella Adams, *et al.* Citation. Filed Apr. 9, 1906. John D. Jordan, Clerk.

58 *(Clerk's Certificate.)*

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing sixty-two pages contain full, true and complete copies of all the pleadings, proceedings and record entries, including the opinion of said Circuit Court of Appeals, in a certain cause in said Court wherein Hugh Wallace, *et al.,* were Plaintiffs in Error, and Mrs. Ella Adams, for herself and as natural guardian and next friend of Henry McSwain and Roma McSwain, her minor children, were Defendants in Error, No. 2313, December Term, 1905, as full, true and complete as the same remain on file and of record in my office.

I do further certify that the original writ of error, with the Clerk's return thereto, and the original citation, with the proof of service endorsed thereon, are hereto attached and herewith returned.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals, at office in the City of St. Louis, Missouri, in the Eighth Circuit, this fourteenth day of April, A. D. 1906.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Endorsed on cover: File No. 20,205. U. S. circuit court of appeals, 8th circuit. Term No. 260. Hugh Wallace, Will Wallace, Verge Goodwin *et al.,* plaintiffs in error, *vs.* Mrs. Ella Adams, for herself and as natural guardian and next friend of Henry McSwain and Roma McSwain, her minor children. Filed April 20th, 1906. File No. 20,205.